

CODE OF VIRGINIA

Effective July 1, 2008

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Subtitle I. General Provisions Relating to Social Services

CHAPTER 1. General Provisions.

§ 63.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis; or

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

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If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being.

"Adult protective services" means services provided by the local department that are necessary to protect an adult from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.) of this title, but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or

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the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

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3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of

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personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

"Independent living" means a planned program of services designed to assist a child aged 16 and over and persons who are former foster care children between the ages of 18 and 21 in transitioning from foster care to self sufficiency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform

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assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Social services" means foster care, adoption, adoption assistance, adult services, adult protective services, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for Employment Not Welfare (VIEW) participation under § 63.2-609.

"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

(Code 1950, §§ 63-101, 63-222, 63-232, 63-347, 63-351; 1954, cc. 259, 290, 489; 1956, cc. 300, 641; 1960, cc. 331, 390; 1962, cc. 297, 603; 1966, c. 423; 1968, cc. 578, 585, §§ 63.1-87, 63.1-172, 63.1-195, 63.1-220; 1970, c. 721; 1972, cc. 73, 540, 718; 1973, c. 227; 1974, cc. 44, 45, 413, 415, § 63.1-250; 1975, cc. 287, 299, 311, 341, 437, 507, 524, 528, 596, §§ 63.1-238.1, 63.1-248.2; 1976, cc. 357, 649; 1977, cc. 105, 241, 532, 547, 559, 567, 634, 645, §§ 63.1-55.2, 63.1-55.8; 1978, cc. 536, 730, 749, 750; 1979, c. 483; 1980, cc. 40, 284; 1981, cc. 75, 123, 359; 1983, c. 66; 1984, cc. 74, 76, 498, 535, 781; 1985, cc. 17, 285, 384, 488, 518; 1986, cc. 80, 281, 308, 437, 594; 1987, cc. 627, 650, 681; 1988, c. 906; 1989, cc. 307, 647; 1990, c. 760; 1991, cc. 534, 595, 651, 694; 1992 c. 356, § 63.1-194.1; 1993, cc. 730, 742, 957, 993, § 63.1-196.001; 1994, cc. 107, 837, 865, 940; 1995, cc. 401, 520, 649, 772, 826; 1997, cc. 796, 895; 1998, cc. 115, 126, 397, 552, 727, 850; 1999, c. 454; 2000, cc. 61, 290, 500, 830, 845, 1058, § 63.1-219.7; 2002, c. 747; 2003, c. 467; 2004, cc. 70, 196, 245, 753, 814; 2006, c. 868; 2007, cc. 479, 597; 2008, cc. 475, 483.)

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CHAPTER 17.

Licensure and Registration Procedures.

Article 1.

General Provisions.

§ 63.2-1700. Application fees; regulations and schedules; use of fees; certain facilities, centers and agencies exempt.

The Board is authorized to adopt regulations and schedules for fees to be charged for processing applications for licenses to operate assisted living facilities, adult day care centers and child welfare agencies. Such schedules shall specify minimum and maximum fees and, where appropriate, gradations based on the capacity of such facilities, centers and agencies. Fees shall be used for the development and delivery of training for operators and staff of facilities, centers and agencies. Fees shall be expended for this purpose within two fiscal years following the fiscal year in which they are collected. These fees shall not be applicable to facilities, centers or agencies operated by federal entities.

The Board, in consultation with the Child Day-Care Council, shall develop training programs for operators and staffs of licensed child day programs. Such programs shall include formal and informal training offered by institutions of higher education, state and national associations representing child care professionals, local and regional early childhood educational organizations and licensed child care providers. To the maximum extent possible, the Board shall ensure that all provider interests are represented and that no single approach to training shall be given preference. (1983, c. 153, §§ 63.1-174.01, 63.1-196.5; 1988, c. 129; 1991, c. 532; 1992, c. 356, § 63.1-194.3; 1993, cc. 225, 730, 742, 957, 993; 1996, c. 492; 2002, c. 747.)

§ 63.2-1701. Licenses required; issuance, expiration and renewal; maximum number of residents, participants or children; posting of licenses.

A. Every person who constitutes, or who operates or maintains, an assisted living facility, adult day care center or child welfare agency shall obtain the appropriate license from the Commissioner, which may be renewed. The Commissioner, upon request, shall consult with, advise, and assist any person interested in securing and maintaining any such license. Each application for a license shall be made to the Commissioner, in such form as he may prescribe. It shall contain the name and address of the applicant, and, if the applicant is an association, partnership, limited liability company or corporation, the names and addresses of its officers and agents. The application shall also contain a description of the activities proposed to be engaged in and the facilities and services to be employed, together with other pertinent information as the Commissioner may require.

B. The licenses shall be issued on forms prescribed by the Commissioner. Any two or more licenses may be issued for concurrent operation of more than one assisted living facility, adult day care center or child welfare agency, but each license shall be issued upon a separate form. Each license and renewals thereof for an assisted living facility, adult day care center or child welfare agency may be issued for periods of up to three successive years, unless sooner revoked or surrendered. Licenses issued to child day centers under this chapter shall have a duration of two years from date of issuance.

C. The length of each license or renewal thereof for an assisted living facility shall be based on the judgment of the Commissioner regarding the compliance history of the facility and the extent to which it meets or exceeds state licensing standards. Based on this judgment, the

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Commissioner may issue licenses or renewals thereof for periods of six months, one year, two years, or three years.

D. The Commissioner may extend or shorten the duration of licensure periods for a child welfare agency whenever, in his sole discretion, it is administratively necessary to redistribute the workload for greater efficiency in staff utilization.

E. Each license shall indicate the maximum number of persons who may be cared for in the assisted living facility, adult day care center or child welfare agency for which it is issued.

F. The license and any other documents required by the Commissioner shall be posted in a conspicuous place on the licensed premises.

G. Every person issued a license that has not been suspended or revoked shall renew such license prior to its expiration. (Code 1950, §§ 63-23.1, 63-233, 63-234; 1954, c. 259; 1968, cc. 578, 585, §§ 63.1-175, 63.1-196, 63.1-197; 1972, c. 540, § 63.1-196.1; 1973, c. 227; 1974 c. 419; 1975 c. 386; 1979, cc. 461, 483; 1981, c. 222; 1983, c. 153; 1985 c. 384; 1987, cc. 693, 698; 1991, c. 532; 1992, cc. 356, 666, § 63.1-194.5; 1993, cc. 730, 742, 957, 993; 1994, c. 686; 1996, c. 747; 1999, cc. 740, 964; 2000, cc. 178, 203; 2002 cc. 380, 747.)

§ 63.2-1702. Investigation on receipt of application.

Upon receipt of the application the Commissioner shall cause an investigation to be made of the activities, services and facilities of the applicant, of the applicant's financial responsibility, and of his character and reputation or, if the applicant is an association, partnership, limited liability company or corporation, the character and reputation of its officers and agents. In the case of child welfare agencies, the financial records of an applicant shall not be subject to inspection if the applicant submits a current balance sheet and income statement accompanied by a letter from a certified public accountant certifying the accuracy thereof and three credit references. In the case of child welfare agencies and assisted living facilities, the character and reputation investigation upon application shall include background checks pursuant to § 63.2-1721; however, a children's residential facility shall comply with the background check requirements contained in § 63.2-1726. (Code 1950, §§ 63-223.2, 63-234, 63-235; 1954, c. 259; 1968, cc. 578, 585, §§ 63.1-176, 63.1-197, 63.1-198; 1972, c. 540; 1975, c. 439; 1985, c. 360; 1987, c. 693; 1992, cc. 356, 746 § 63.1-194.6; 1993, cc. 730, 742; 1995, c. 401; 1996, c. 747; 1997, c. 427; 1998, cc. 551, 581; 2002, c. 747; 2005, cc. 610, 924.)

§ 63.2-1703. Variances.

The Commissioner may grant a variance to a regulation when the Commissioner determines that (i) a licensee or applicant for licensure as an assisted living facility, adult day center or child welfare agency has demonstrated that the implementation of a regulation would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and well-being of residents, participants or children in care. The Commissioner shall review each allowable variance at least annually. At a minimum, this review shall address the impact of the allowable variance on persons in care, adherence by the licensee to any conditions attached, and the continuing need for the allowable variance. (Code 1950, § 63-233; 1968, cc. 578, 585, § 63.1-196; 1972, c. 540; 1974, c. 419; 1975, c. 386; 1979, c. 483; 1985, c. 384; 1992, c. 666; 1993, cc. 730, 742; 1999, c. 740; 2002, c. 747.)

§ 63.2-1704. Voluntary registration of family day homes; inspections; investigation upon receipt of complaint; revocation or suspension of registration.

A. Any person who maintains a family day home serving fewer than six children, exclusive of the provider's own children and any children who reside in the home, may apply for voluntary registration. An applicant shall file with the Commissioner, prior to beginning any

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such operation and thereafter biennially, a statement which shall include, but not be limited to, the following:

1. The name, address, phone number, and social security number of the person maintaining the family day home;
2. The number and ages of the children to receive care;
3. A sworn statement or affirmation in which the applicant attests to the accuracy of the information submitted to the Commissioner;
4. Documentation that the background check requirements for registered child welfare agencies in Article 3 (§ 63.2-1719 et seq.) of this chapter have been met; and
5. Documentation that the home has met the requirements of a self-administered health and safety guidelines evaluation checklist adopted by the Board.

Upon receiving such information on prescribed forms, and after having determined that the home has satisfied the standards for voluntary registration, the Commissioner shall issue a certificate of registration to the family day home.

B. The Commissioner shall contract with qualified local agencies and community organizations to certify family day homes as eligible for registration, pursuant to Board regulations. If no qualified local agencies or community organizations are available, the Commissioner shall implement the provisions of this section. Upon receipt of an application of a qualified local agency or community organization to certify family day homes as eligible for registration, the Commissioner shall cause an investigation to be made of the applicant's activities, services, facilities, and financial responsibility, of the character and reputation of the officers and agents of the applicant, and of its compliance with requirements established for the issuance of such contracts.

C. The Board shall adopt regulations to implement the provisions of this section. Such regulations shall provide guidelines for the following:

1. The identification of family day homes which may meet the standards for voluntary registration provided in subsection A;
2. The establishment of qualifications for local agencies and community organizations to which a contract may be issued by the Commissioner for the certification of family day homes as eligible for registration, and standards for the purpose of ensuring compliance with the standards and requirements of the contract, including monitoring and random inspections;
3. The establishment of standards and requirements for contracts issued by the Commissioner to qualified local agencies and community organizations, upon review of the Board, for the certification of family day homes as eligible for registration;
4. A requirement that the contract organization shall provide administrative services, including, but not limited to, processing applications for the voluntary registration of family day homes, certifying such homes as eligible for registration, providing technical assistance, training and consultation with family day homes, and maintaining permanent records regarding all family day homes which it may certify as eligible for registration;
5. The establishment of requirements for a self-administered health and safety guidelines evaluation checklist;
6. The criteria and process for the renewal of the certificate of registration; and
7. A schedule for charges to be made by the contract organization or by the Department if it implements the provisions of this section, for processing applications for the voluntary registration of family day homes. The charges collected shall be maintained for the purpose of recovering administrative costs incurred in processing applications and certifying as eligible or registering such homes.

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D. The contract organization, upon determining that a family day home has satisfied the standards for voluntary registration, shall certify the home as eligible for registration on forms prescribed by the Commissioner. The Commissioner, upon determining that certification has been properly issued, may register the family day home.

E. The provisions of this section shall not apply to any family day home located in a county, city, or town in which the governing body provides by ordinance for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities pursuant to the provisions of § 15.2-914.

F. Upon receipt of a complaint concerning a registered family day home, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, and facilities. The person who maintains such home shall afford the Commissioner reasonable opportunity to inspect the operator's facilities and records and to interview any employees and any child or other person within his custody or control. Whenever a registered family day home is determined by the Commissioner to be in noncompliance with the standards for voluntary registration, the Commissioner shall give reasonable notice to the operator of the nature of the noncompliance and may thereafter revoke or suspend the registration. (1991, c. 595, § 63.1-196.04; 1992, c. 746; 1993, cc. 730, 742; 2002, c. 747.)

§ 63.2-1705. Compliance with Uniform Statewide Building Code.

A. Buildings licensed as assisted living facilities, adult day care centers and child welfare agencies shall be classified by and meet the specifications for the proper Use Group as required by the Virginia Uniform Statewide Building Code.

B. Buildings used for assisted living facilities or adult day care centers shall be licensed for ambulatory or nonambulatory residents or participants. Ambulatory means the condition of a resident or participant who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by the Uniform Statewide Building Code without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident or participant may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate. Nonambulatory means the condition of a resident or participant who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person. (1981, c. 275, § 63.1-174.1; 1986, c. 430; 1989, c. 173; 1991, c. 532; 1992, c. 356, § 63.1-194.4; 1993, cc. 957, 993; 1998, c. 552; 2002, c. 747.)

§ 63.2-1706. Inspections and interviews.

A. Applicants for licensure and licensees shall at all times afford the Commissioner reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any person living or participating in such facilities, or under their custody, control, direction or supervision.

B. For any assisted living facility or adult day care center issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any assisted living facility or adult day care center issued a license or renewal thereof for a period of one year, the Commissioner shall make at least three inspections each year, at least two of which shall be unannounced. For any assisted living facility or adult day care center issued a license or a renewal thereof for a period of two years, the Commissioner shall make at least two inspections each year, at least one of which shall be unannounced. For any assisted living facility or adult day care center issued a

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three-year license, the Commissioner shall make at least one inspection each year, which shall be unannounced.

C. All licensed child welfare agencies shall be inspected not less than twice annually, and one of those inspections shall be unannounced.

D. The activities, services and facilities of each applicant for renewal of his license as an assisted living facility, adult day care center or child welfare agency shall be subject to an inspection or examination by the Commissioner to determine if he is in compliance with current regulations of the Board or Child Day-Care Council, whichever is applicable.

E. For any licensed assisted living facility, adult day care center or child welfare agency, the Commissioner may authorize such other announced or unannounced inspections as the Commissioner considers appropriate. (Code 1950, §§ 63-224, 63-247; 1954, c. 259; 1968, c. 578, §§ 63.1-177, 63.1-210; 1972, c. 540, § 63.1-196.1; 1973, c. 227; 1979, c. 73; 1987, c. 698; 1988, cc. 61, 151; 1991, c. 532; 1992, cc. 356, 666, § 63.1-194.7; 1993, cc. 957, 993; 1999, c. 964; 2000, c. 130; 2002, c. 747.)

§ 63.2-1707. Issuance or refusal of license; notification; provisional and conditional licenses.

Upon completion of his investigation, the Commissioner shall issue an appropriate license to the applicant if (i) the applicant has made adequate provision for such activities, services and facilities as are reasonably conducive to the welfare of the residents, participants or children over whom he may have custody or control; (ii) the applicant has submitted satisfactory documentation of financial responsibility such as, but not limited to, a letter of credit, a certified financial statement, or similar documents; (iii) he is, or the officers and agents of the applicant if it is an association, partnership, limited liability company or corporation are, of good character and reputation; and (iv) the applicant and agents comply with the provisions of this subtitle. Otherwise, the license shall be denied. Immediately upon taking final action, the Commissioner shall notify the applicant of such action.

Upon completion of the investigation for the renewal of a license, the Commissioner may issue a provisional license to any applicant if the applicant is temporarily unable to comply with all of the licensure requirements. The provisional license may be renewed, but the issuance of a provisional license and any renewals thereof shall be for no longer a period than six successive months. A copy of the provisional license shall be prominently displayed by the provider at each public entrance of the subject facility and shall be printed in a clear and legible size and style. In addition, the facility shall be required to prominently display next to the posted provisional license a notice that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility and on the facility's website, if applicable.

At the discretion of the Commissioner, a conditional license may be issued to an applicant to operate a new facility in order to permit the applicant to demonstrate compliance with licensure requirements. Such conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months. (Code 1950, §§ 63-224.1, 63-236, 63-238; 1954, c. 259; 1968, c. 578, §§ 63.1-178, 63.1-199, 63.1-201; 1981, c. 222; 1985, c. 360; 1987, cc. 130, 692; 1988, c. 199; 1992, cc. 356, 666, § 63.1-194.8; 1993, cc. 730, 742; 1996, c. 747; 1998, cc. 551, 581, 1999, c. 740; 2002, c. 747; 2005, cc. 610, 924.)

§ 63.2-1708. Records and reports.

Every licensed assisted living facility, licensed adult day care center, licensed or registered child welfare agency, or family day home approved by a family day system shall keep such records and make such reports to the Commissioner as he may require. The forms to be

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used in the making of such reports shall be prescribed and furnished by the Commissioner. (Code 1950, § 63-240; 1968, c. 578, § 63.1-203; 1978, c. 730; 2000, c. 830; 2002, c. 747.)

§ 63.2-1709. Enforcement and sanctions; assisted living facilities and adult day care centers; interim administration; receivership, revocation, denial, summary suspension.

A. Upon receipt and verification by the Commissioner of information from any source indicating an imminent and substantial risk of harm to residents, the Commissioner may require an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators, to be either selected from a list created and maintained by the Department of Medical Assistance Services or selected from a pool of appropriately licensed administrators recommended by the owner of the assisted living facility, to administer, manage, or operate the assisted living facility on an interim basis, and to attempt to bring the facility into compliance with all relevant requirements of law, regulation, or any plan of correction approved by the Commissioner. Such contract shall require the interim administrator to comply with any and all requirements established by the Department to ensure the health, safety, and welfare of the residents. Prior to or upon conclusion of the period of interim administration, management, or operation, an inspection shall be conducted to determine whether operation of the assisted living facility shall be permitted to continue or should cease. Such interim administration, management, or operation shall not be permitted when defects in the conditions of the premises of the assisted living facility (i) present imminent and substantial risks to the health, safety, and welfare of residents, and (ii) may not be corrected within a reasonable period of time. Any decision by the Commissioner to require the employment of a person to administer, manage, or operate an assisted living facility shall be subject to the rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.). Actual and reasonable costs of such interim administration shall be the responsibility of and shall be borne by the owner of the assisted living facility.

B. The Board shall adopt regulations for the Commissioner to use in determining when the imposition of administrative sanctions or initiation of court proceedings, severally or jointly, is appropriate in order to ensure prompt correction of violations in assisted living facilities and adult day care centers involving noncompliance with state law or regulation as discovered through any inspection or investigation conducted by the Departments of Social Services, Health, or Mental Health, Mental Retardation and Substance Abuse Services. The Commissioner may impose such sanctions or take such actions as are appropriate for violation of any of the provisions of this subtitle or any regulation adopted under any provision of this subtitle that adversely affects the health, safety or welfare of an assisted living facility resident or an adult day care participant. Such sanctions or actions may include (i) petitioning the court to appoint a receiver for any assisted living facility or adult day care center and (ii) revoking or denying renewal of the license for the assisted living facility or adult day care center for violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under this subtitle that violation adversely affects, or is an imminent and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding or abetting the commission of any illegal act in an assisted living facility or adult day care center.

C. The Commissioner may issue a summary order of suspension of the license to operate the assisted living facility pursuant to the procedures hereinafter set forth in conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety, and welfare of the residents. Before a summary order of suspension shall take effect, the Commissioner shall issue to the assisted living facility a notice of summary order of suspension setting forth (i) the procedures for the

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summary order of suspension, (ii) hearing and appeal rights as provided under this subsection, and (iii) facts and evidence that formed the basis for which the summary order of suspension is sought. Such notice shall be served on the assisted living facility or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the assisted living facility. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be presided over by a hearing officer selected by the Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be held as soon as practicable, but in no event later than 15 business days following service of the notice of hearing; however, the hearing officer may grant a written request for a continuance, not to exceed an additional 10 business days, for good cause shown. After such hearing, the hearing officer shall provide to the Commissioner written findings and conclusions, together with a recommendation whether the license should be summarily suspended, whereupon the Commissioner shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. Any final agency case decision in which the Commissioner rejects a hearing officer's recommended decision shall state with particularity the basis for rejection. The Commissioner shall issue: (a) a final order of summary suspension or (b) an order that summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the assisted living facility may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following service of the order. A copy of any final order of summary suspension shall be prominently displayed by the provider at each public entrance of the facility, or in lieu thereof, the provider may display a written statement summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface, and identifying the location within the facility where the final order of summary suspension may be reviewed.

Upon appeal, the sole issue before the court shall be whether the Department had reasonable grounds to require the assisted living facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. Any concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary order of suspension. Failure to comply with the summary order of suspension shall constitute an offense under subdivision 1 of § 63.2-1712. All agencies and subdivisions of the Commonwealth shall cooperate with the Commissioner in the relocation of residents of an assisted living facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to residents.

D. Notice of the Commissioner's intent to revoke or deny renewal of the license for the assisted living facility shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. In determining whether to deny, revoke, or summarily suspend a license, the Commissioner may choose to deny, revoke, or summarily suspend only certain authority of the assisted living facility to operate, and may restrict or modify the assisted living facility's authority to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the residents. Such denial, revocation, or summary suspension of certain services or functions may be appealed as otherwise provided in this subtitle for any denial, revocation, or summary suspension. (Code 1950, § 63-249; 1968, c. 578, § 63.1-212; 1991, c. 532, § 63.1-179.1; 1992, c. 356, § 63.1-194.9; 1993, cc. 730, 742, 957, 993, § 63.1-211.3; 1998, cc. 115, 397, 850; 2002, c. 747; 2005, cc. 610, 924.)

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§ 63.2-1709.1. Enforcement and sanctions; child welfare agencies; revocation and denial.

The Commissioner may revoke or deny the renewal of the license of any child welfare agency that violates any provision of this subtitle or fails to comply with the limitations and standards set forth in its license. (2005, cc. 610, 924.)

§ 63.2-1709.2. Enforcement and sanctions; special orders; civil penalties.

A. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order (i) for violation of any of the provisions of this subtitle, § 54.1-3408, or any regulation adopted under any provision of this subtitle which violation adversely affects, or is an imminent and substantial threat to, the health, safety, or welfare of the person cared for therein, or (ii) for permitting, aiding, or abetting the commission of any illegal act in an assisted living facility, adult day care center, or child welfare agency. Notice of the Commissioner's intent to take any of the actions enumerated in subdivisions B 1 through B 7 shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders.

B. The Commissioner may take the following actions regarding assisted living facilities, adult day care centers, and child welfare agencies through the issuance of a special order and may require a copy of the special order provided by the Department to be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations:

1. Place a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of its license and that the health and safety of residents, participants, or children are at risk;
2. Reduce licensed capacity or prohibit new admissions when the Commissioner concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service;
3. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the Commissioner concludes that the lack of such training has led directly to violations of regulations;
4. Assess civil penalties for each day the assisted living facility is or was out of compliance with the terms of its license and the health, safety, and welfare of residents are at risk, which shall be paid into the state treasury and credited to the Assisted Living Facility Education, Training, and Technical Assistance Fund created pursuant to § 63.2-1803.1. The aggregate amount of such civil penalties shall not exceed \$10,000 for assisted living facilities in any 24-month period. Criteria for imposition of civil penalties and amounts, expressed in ranges, shall be developed by the Board, and shall be based upon the severity, pervasiveness, duration, and degree of risk to the health, safety, or welfare of residents. Such civil penalties shall be applied by the Commissioner in a consistent manner. Such criteria shall also provide that (i) the Commissioner may accept a plan of correction, including a schedule of compliance, from an assisted living facility prior to setting a civil penalty, and (ii) the Commissioner may reduce or abate the penalty amount if the facility complies with the plan of correction within its terms.

A single act, omission, or incident shall not give rise to imposition of multiple civil penalties even though such act, omission, or incident may violate more than one statute or regulation. A civil penalty that is not appealed becomes due on the first day after the appeal period expires. The license of an assisted living facility that has failed to pay a civil penalty due

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under this section shall not be renewed until the civil penalty has been paid in full, with interest, provided that the Commissioner may renew a license when an unpaid civil penalty is the subject of a pending appeal;

5. Assess civil penalties of not more than \$500 per inspection upon finding that the adult day care center or child welfare agency is substantially out of compliance with the terms of its license and the health and safety of residents, participants, or children are at risk;

6. Require licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and

7. Prevent licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

C. The Board shall adopt regulations to implement the provisions of this section. (2005, cc. 610, 924.)

§ 63.2-1710. Appeal from refusal, denial of renewal or revocation of license.

A. Whenever the Commissioner refuses to issue a license or to renew a license, or revokes a license for an assisted living facility, adult day care center or child welfare agency, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply, except that all appeals from notice of the Commissioner's intent to refuse to issue or renew, or revoke a license shall be received in writing from the assisted living facility, adult day care center or child welfare agency operator within fifteen days of the date of receipt of the notice. Judicial review of a final review agency decision shall be in accordance with the provisions of the Administrative Process Act. No stay may be granted upon appeal to the Virginia Supreme Court.

B. In every appeal to a court of record, the Commissioner shall be named defendant.

C. An appeal, taken as provided in this section, shall operate to stay any criminal prosecution for operation without a license.

D. When issuance or renewal of a license as an assisted living facility or adult day care center has been refused by the Commissioner, the applicant shall not thereafter for a period of one year apply again for such license unless the Commissioner in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application. When an appeal is taken by the applicant pursuant to subsection A, the one-year period shall be extended until a final decision has been rendered on appeal.

E. When issuance or renewal of a license for a child welfare agency has been refused by the Commissioner, the applicant shall not thereafter for a period of six months apply again for such license unless the Commissioner in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application. When an appeal is taken by the applicant pursuant to subsection A, the six-month period shall be extended until a final decision has been rendered on appeal.

(Code 1950, §§ 63-224.3, 63-250; 1954, c. 259; 1968, c. 578, §§ 63.1-180, 63.1-213; 1973, c. 227; 1975, c. 539; 1986, c. 615; 1991, c. 532; 1992, c. 356, § 63.1-194.10; 1993, cc. 957, 993; 1998, c. 850; 2002, c. 747.)

§ 63.2-1711. Injunction against operation without license.

Any circuit court having jurisdiction in the county or city where the principal office of any assisted living facility, adult day care center or child welfare agency is located shall, at the suit of the Commissioner, have jurisdiction to enjoin its operation without a license required by this subtitle. (Code 1950, §§ 63-224.2, 63-251; 1954, c. 259; 1968, c. 578, §§ 63.1-181, 63.1-214; 1973, c. 227; 1992, c. 356, § 63.1-194.11; 1993, cc. 957, 993; 2002, c. 747.)

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§ 63.2-1712. Offenses; penalty.

Any person, and each officer and each member of the governing board of any association or corporation that operates an assisted living facility, adult day care center or child welfare agency, shall be guilty of a Class 1 misdemeanor if he:

1. Interferes with any representative of the Commissioner in the discharge of his duties under this subtitle;

2. Makes to the Commissioner or any representative of the Commissioner any report or statement, with respect to the operation of any assisted living facility, adult day care center or child welfare agency, that is known by such person to be false or untrue;

3. Operates or engages in the conduct of an assisted living facility, adult day care center or child welfare agency without first obtaining a license as required by this subtitle or after such license has been revoked or has expired and not been renewed. No violation shall occur if the facility, center or agency has applied to the Department for renewal prior to the expiration date of the license. Every day's violation of this subdivision shall constitute a separate offense; or

4. Operates or engages in the conduct of an assisted living facility, adult day care center or child welfare agency serving more persons than the maximum stipulated in the license. (Code 1950, §§ 63-227, 63-252; 1954, c. 259; 1968, c. 578, §§ 63.1-182, 63.1-215; 1973, c. 227; 1992, c. 356, § 63.1-194.12; 1993, cc. 957, 993; 2002, c. 747.)

§ 63.2-1713. Misleading advertising prohibited.

No assisted living facility, adult day care center or child welfare agency shall make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public in this Commonwealth, in a newspaper or other publication; in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet, or letter; or via electronic mail, website, automatic mailing list services (listservs), newsgroups, facsimile, chat rooms; or in any other way an advertisement of any sort regarding services or anything so offered to the public, which advertisement contains any promise, assertion, representation or statement of fact that is untrue, deceptive or misleading. (1993, cc. 730, 742, § 63.1-201.1; 2002, c. 747.)

§ 63.2-1714. Duty of attorneys for the Commonwealth.

It shall be the duty of the attorney for the Commonwealth of every county and city to prosecute all violations of this subtitle. (Code 1950, §§ 63-227, 63-253; 1954, c. 259; 1968, c. 578, §§ 63.1-182, 63.1-216; 1973, c. 227; 1992, c. 356, § 63.1-194.12; 1993, cc. 957, 993; 2002, c. 747.)

§ 63.2-1715. Exemptions from licensure.

A. The following child day programs shall not be required to be licensed:

1. A child day center that has obtained an exemption pursuant to § 63.2-1716.

2. A program where, by written policy given to and signed by a parent or guardian, children are free to enter and leave the premises without permission or supervision. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure.

3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period.

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4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation.

5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week.

6. Instructional programs offered by public and private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

7. Education and care programs provided by public schools that are not exempt pursuant to subdivision A 6 shall be regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the Commissioner.

8. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per week.

9. Practice or competition in organized competitive sports leagues.

10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services.

11. Child-minding services that are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, except for part-time employees working less than two hours per day, (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes, and (iii) is receiving or providing services or participating in activities offered by the establishment.

12. A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717.

13. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by local governments.

B. Family day homes that are members of a licensed family day system shall not be required to obtain a license from the Commissioner.

C. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be required to be licensed. (1993, cc. 730, 742, § 63.1-196.001; 1994, cc. 837, 940; 1999, c. 454; 2000, cc. 61, 1058; 2002, c. 747; 2003, c. 467; 2006, c. 725.)

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§ 63.2-1716. Child day center operated by religious institution exempt from licensure; annual statement and documentary evidence required; enforcement; injunctive relief.

A. Notwithstanding any other provisions of this chapter, a child day center, including a child day center that is a child welfare agency operated or conducted under the auspices of a religious institution shall be exempt from the licensure requirements of this subtitle, but shall comply with the provisions of this section unless it chooses to be licensed. If such religious institution chooses not to be licensed, it shall file with the Commissioner, prior to beginning operation of a child day center and thereafter annually, a statement of intent to operate a child day center, certification that the child day center has disclosed in writing to the parents or guardians of the children in the center the fact that it is exempt from licensure, the qualifications of the personnel employed therein and documentary evidence that:

1. Such religious institution has tax exempt status as a nonprofit religious institution in accordance with § 501 (c) of the Internal Revenue Code of 1954, as amended, or that the real property owned and exclusively occupied by the religious institution is exempt from local taxation.

2. Within the prior 90 days for the initial exemption and within the prior 180 days for exemptions thereafter, the local health department and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, have inspected the physical facilities of the child day center and have determined that the center is in compliance with applicable laws and regulations with regard to food service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code.

3. The child day center employs supervisory personnel according to the following ratio of staff to children:

- a. One staff member to four children from zero to twenty-four months.
- b. One staff member to ten children from ages twenty-four months to six years.
- c. One staff member to twenty-five children ages six years and older.

Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children. In each grouping of children, at least one adult staff member shall be regularly present. Staff members shall be at least 16 years of age. Staff members under 18 years of age shall be under the supervision of an adult staff member. Adult staff members shall supervise no more than two staff members under 18 years of age at any given time.

4. Each person in a supervisory position has been certified by a practicing physician or physician assistant to be free from any disability which would prevent him from caring for children under his supervision.

5. The center is in compliance with the requirements of:

- a. This section.
- b. Section 63.2-1724 relating to background checks.
- c. Section 63.2-1509 relating to the reporting of suspected cases of child abuse and neglect.

d. Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 regarding a valid Virginia driver's license or commercial driver's license; of Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2, regarding vehicle inspections; ensuring that any vehicle used to transport children is an insured motor vehicle as defined in § 46.2-705; and Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of Title 46.2, regarding child restraint devices.

6. The following aspects of the child day center's operations are described in a written statement provided to the parents or guardians of the children in the center and made available to

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the general public: physical facilities, enrollment capacity, food services, health requirements for the staff and public liability insurance.

B. The center shall establish and implement procedures for:

1. Hand washing by staff and children before eating and after toileting and diapering.
2. Appropriate supervision of all children in care, including daily intake and dismissal procedures to ensure safety of children.
3. A daily simple health screening and exclusion of sick children by a person trained to perform such screenings.
4. Ensuring that a person trained and certified in first aid is present at the center whenever children are present.
5. Ensuring that all children in the center are in compliance with the provisions of § 32.1-46 regarding the immunization of children against certain diseases.
6. Ensuring that all areas of the premises accessible to children are free of obvious injury hazards, including providing and maintaining sand or other cushioning material under playground equipment.
7. Ensuring that all staff are able to recognize the signs of child abuse and neglect.

C. The Commissioner may perform on-site inspections of religious institutions to confirm compliance with the provisions of this section and to investigate complaints that the religious institution is not in compliance with the provisions of this section. The Commissioner may revoke the exemption for any child day center in serious or persistent violation of the requirements of this section. If a religious institution operates a child day center and does not file the statement and documentary evidence required by this section, the Commissioner shall give reasonable notice to such religious institution of the nature of its noncompliance and may thereafter take such action as he determines appropriate, including a suit to enjoin the operation of the child day center.

D. Any person who has reason to believe that a child day center falling within the provisions of this section is not in compliance with the requirements of this section may report the same to the local department, the local health department or the local fire marshal, each of which may inspect the child day center for noncompliance, give reasonable notice to the religious institution, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the child day center.

E. Nothing in this section shall prohibit a child day center operated by or conducted under the auspices of a religious institution from obtaining a license pursuant to this chapter. (1979, c. 425, § 63.1-196.3; 1989, c. 258; 1993, cc. 730, 742; 2000, c. 283; 2002, c. 747; 2004, c. 113; 2006, c. 396.)

§ 63.2-1717. Certification of preschool or nursery school programs operated by accredited private schools; provisional certification; annual statement and documentary evidence required; enforcement; injunctive relief.

A. A preschool or nursery school program operated by a private school accredited by a statewide accrediting organization recognized by the Board of Education or a private school or preschool that offers to preschool-aged children a program accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or

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the National Accreditation Commission and is recognized by the Board of Education, shall be exempt from licensure under this subtitle if it complies with the provisions of this section and meets the requirements of subsection B, C or D.

B. A school described in subsection A shall meet the following conditions in order to be exempt under this subsection:

1. The school offers kindergarten or elementary school instructional programs that satisfy compulsory school attendance laws, and children below the age of compulsory school attendance also participate in such instructional programs;

2. The instructional programs for children of and below the age of eligibility for school attendance share (i) a specific verifiable common pedagogy, (ii) education materials, (iii) methods of instruction, and (iv) professional training and individual teacher certification standards, all of which are required by a state-recognized accrediting organization;

3. The instructional programs described in subdivisions 1 and 2 have mixed age groups of three-year-old to six-year-old children and the number of pupils in the preschool program does not exceed 15 pupils for each instructional adult;

4. The instructional program contemplates a three-to-four-year learning cycle under a common pedagogy; and

5. Children below the age of eligibility for kindergarten attendance do not attend the instructional program for more than four hours per day.

C. A school described in subsection A shall be exempt from licensure if it maintains an enrollment ratio at any one time during the current school year of five children age five or above to one four-year-old child as long as no child in attendance is under age four and the number of pupils in the preschool program does not exceed 12 pupils for each instructional adult.

D. A private school or preschool described in subsection A shall meet the following conditions in order to be exempt under this subsection:

1. The school offers instructional classes and has been in operation since January 1984.

2. The school does not hold itself out as a child care center, child day center, or child day program.

3. Children enrolled in the school are at least three years of age and do not attend more than (i) three hours per day and (ii) five days per week.

4. The enrolled children attend only one program offered by the school per day.

5. The school maintains a certificate or permit issued pursuant to a local government ordinance that addresses health, safety and welfare of the children, such as but not limited to space requirements, and requires annual inspections.

E. The school shall file with the Commissioner, prior to the beginning of the school year or calendar year, as the case may be, and thereafter, annually, a statement which includes the following:

1. Intent to operate a certified preschool program;

2. Documentary evidence that the school has been accredited as provided in subsection

A;

3. Documentation that the school has disclosed in writing to the parents, guardians, or persons having charge of a child enrolled in the school's preschool program the fact of the program's exemption from licensure;

4. Documentary evidence that the physical facility in which the preschool program will be conducted has been inspected (i) before initial certification by the local building official and (ii) within the 12-month period prior to initial certification and at least annually thereafter by the local health department, and local fire marshal or Office of the State Fire Marshal, whichever is

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appropriate, and an inspection report which documents that the facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code;

5. Documentation that the school has disclosed the following in writing to the parents, guardians, or persons having charge of a child enrolled in the school's preschool program, and in a written statement available to the general public: (i) the school facility is in compliance with applicable laws and regulations pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code, (ii) the preschool program's maximum capacity, (iii) the school's policy or practice for pupil-teacher ratio, staffing patterns and staff health requirements, and (iv) a description of the school's public liability insurance, if any;

6. Qualifications of school personnel who work in the preschool program; and

7. Documentary evidence that the private school requires all employees of the preschool and other school employees who have contact with the children enrolled in the preschool program to obtain a criminal record check as provided in subdivision A 11 of § 19.2-389 as a condition of initial or continued employment. The school shall not hire or continue employment of any such person who has an offense specified in § 63.2-1719.

All accredited private schools seeking certification of preschool programs shall file such information on forms prescribed by the Commissioner. The Commissioner shall certify all preschool programs of accredited private schools which comply with the provisions of subsection A.

F. A preschool program of a private school that has not been accredited as provided in subsection A, or which has not provided documentation to the Commissioner that it has initiated the accreditation process, shall be subject to licensure.

The Commissioner shall issue a provisional certificate to a private school which provides documentation to the Commissioner that it has initiated the accreditation process. The provisional certificate shall permit the school to operate its preschool program during the accreditation process period. The issuance of an initial provisional certificate shall be for a period not to exceed one year. A provisional certificate may be renewed up to an additional year if the accrediting organization provides a statement indicating it has visited the school within the previous six months and the school has made sufficient progress. Such programs shall not be subject to licensure during the provisional certification period.

G. If a school fails to complete the accreditation process or is denied accreditation, the Commissioner shall revoke the provisional certification and the program shall thereafter be subject to licensure.

H. If the preschool program of a private school which is accredited as provided in subsection A fails to file the statement and the required documentary evidence, the Commissioner shall notify the school of its noncompliance and may thereafter take such action as he determines appropriate, including notice that the program is required to be licensed.

I. The revocation or denial of the certification of a preschool program shall be subject to appeal pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Judicial review of a final agency decision shall be in accordance with the provisions of the Administrative Process Act.

J. Any person who has reason to believe that a private school falling within the provisions of this section is in noncompliance with any applicable requirement of this section may report the same to the Department, the local department, the local health department, or the local fire

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marshal, each of which may inspect the school for noncompliance, give reasonable notice to the school of the nature of its noncompliance, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool program.

K. Upon receipt of a complaint concerning a certified preschool program of an accredited private school, or of a private school to which provisional certification has been issued, if for good cause shown there is reason to suspect that the school is in noncompliance with any provision of this section or the health or safety of the children attending the preschool program is in danger, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary of the services, personnel, and facilities of the school's program. The school shall afford the Commissioner reasonable opportunity to inspect the school's program, records, and facility, and to interview the employees and any child or parent or guardian of a child who is or has been enrolled in the preschool program. If, upon completion of the investigation, it is determined that the school is in noncompliance with the provisions of this section, the Commissioner shall give reasonable notice to the school of the nature of its noncompliance and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool program.

L. Failure of a private school to comply with the provisions of this section, or a finding that the health and safety of the children attending the preschool program are in clear and substantial danger upon the completion of an investigation, shall be grounds for revocation of the certification issued pursuant to this section.

M. If a private school operates a child day program outside the scope of its instructional classes during the school year or operates a child day program during the summer, the child day program shall be subject to licensure under the regulations adopted pursuant to § 63.2-1734.

N. Nothing in this section shall prohibit a preschool operated by or conducted under the auspices of a private school from obtaining a license pursuant to this subtitle. (1993, cc. 730, 742, § 63.1-196.3:1; 1994, cc. 837, 940; 1999, c. 454; 2002, c. 747; 2003, c. 467.)

§ 63.2-1718. Inspection of unlicensed child or adult care operations; inspection warrant.

In order to perform his duties under this subtitle, the Commissioner may enter and inspect any unlicensed child or adult care operation with the consent of the owner or person in charge, or pursuant to a warrant. Administrative search warrants for inspections of child or adult care operations, based upon a petition demonstrating probable cause and supported by an affidavit, may be issued ex parte by any judge having authority to issue criminal warrants whose territorial jurisdiction includes the child or adult care operation to be inspected, if he is satisfied from the petition and affidavit that there is reasonable and probable cause for the inspection. The affidavit shall contain either a statement that consent to inspect has been sought and refused, or that facts and circumstances exist reasonably justifying the failure to seek such consent. Such facts may include, without limitation, past refusals to permit inspection or facts establishing reason to believe that seeking consent would provide an opportunity to conceal violations of statutes or regulations. Probable cause may be demonstrated by an affidavit showing probable cause to believe that the child or adult care operation is in violation of any provision of this subtitle or any regulation adopted pursuant to this subtitle, or upon a showing that the inspection is to be made pursuant to a reasonable administrative plan for the administration of this subtitle. The inspection of a child or adult care operation that has been the subject of a complaint pursuant to § 63.2-1728 shall have preeminent priority over any other inspections of child or adult care operations to be made by the Commissioner unless the complaint on its face or in the context of information known to the Commissioner discloses that the complaint has been brought to harass, to retaliate,

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or otherwise to achieve an improper purpose, and that the improper purpose casts serious doubt on the veracity of the complaint. (1993, cc. 730, 742, § 63.1-198.04; 2002, c. 747.)

§ 63.2-1719. Definitions.

As used in this subtitle:

"Barrier crime" means a conviction of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, "barrier crime" shall also include convictions of burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 and any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.

"Offense" means a barrier crime and, in the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, (i) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction and (ii) a founded complaint of child abuse or neglect within or outside the Commonwealth. In the case of child welfare agencies and foster and adoptive homes approved by child-placing agencies, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. (1985, c. 360, § 63.1-198.1; 1986, cc. 300, 627; 1987, cc. 130, 131, 692, 693; 1992, c. 746; 1993, cc. 730, 742; 1996, c. 747; 1998, cc. 551, 581; 1999, c. 740; 2001, c. 778; 2002, c. 747; 2003, c. 467.)

§ 63.2-1720. Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; background check required; penalty.

A. An assisted living facility, adult day care center or child welfare agency licensed or registered in accordance with the provisions of this chapter, or family day homes approved by family day systems, shall not hire for compensated employment persons who have an offense as defined in § 63.2-1719. Such employees shall undergo background checks pursuant to subsection D. In the case of child welfare agencies, the provisions of this section shall apply to employees

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who are involved in the day-to-day operations of such agency or who are alone with, in control of, or supervising one or more children.

B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one misdemeanor barrier crime not involving abuse or neglect, if five years have elapsed following the conviction.

C. Notwithstanding the provisions of subsection A, a child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

D. Background checks pursuant to this section require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and, in the case of child welfare agencies, whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of child welfare agencies, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

E. Any person desiring to work as a compensated employee at a licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall provide the hiring or approving facility, center or agency with a sworn statement or affirmation pursuant to subdivision D 1. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor.

F. A licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall obtain for any compensated employees within 30 days of employment (i) an original criminal record clearance with respect to convictions for offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange and (ii) in the case of licensed or registered child welfare agencies or family day homes approved by family day systems, a copy of the information from the central registry. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the assisted living facility, adult day care center or child welfare agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

G. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a licensed or registered child welfare agency or a family day home approved by a family day system. Any person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn statement or affirmation pursuant to subdivision D 1. Such child welfare agency shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from the central registry and (ii) an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such child welfare agency shall

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provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a family day home approved by a family day system, whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

H. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to this section.

I. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

J. A licensed assisted living facility shall notify and provide all students a copy of the provisions of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living facility.

K. The provisions of this section shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

L. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct. (1985, c. 360, § 63.1-198.1; 1986, cc. 300, 627; 1987, cc. 130, 131, 692, 693; 1992, cc. 746, 844, §§ 63.1-173.2, 63.1-194.13; 1993, cc. 17, 657, 730, 742, 957, 993; 1996, c. 747; 1998, cc. 551, 581; 1999, cc. 637, 740; 2001, c. 778; 2002, c. 747; 2005, c. 723; 2006, cc. 701, 764.)

§ 63.2-1721. Background check upon application for licensure or registration as child welfare agency; background check of foster or adoptive parents approved by child-placing agencies and family day homes approved by family day systems; penalty.

A. Upon application for licensure or registration as a child welfare agency, (i) all applicants; (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children; and (iii) any other adult living in the home of an applicant for licensure or registration as a family day home shall undergo a background check. Upon application for licensure as an assisted living facility, all applicants shall undergo a background check. In addition, foster or adoptive parents requesting approval by child-placing agencies and operators of family day homes requesting approval by family day systems, and any other adult residing in the family day home or existing employee or volunteer of the family day home, shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to this section require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

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3. In the case of child welfare agencies or adoptive or foster parents, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

C. The character and reputation investigation pursuant to § 63.2-1702 shall include background checks pursuant to subsection B of persons specified in subsection A. The applicant shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license, registration or approval. The applicant shall provide an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 shall be guilty of a Class 1 misdemeanor. If any person specified in subsection A required to have a background check has any offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsections E, F, or G (i) the Commissioner shall not issue a license or registration to a child welfare agency; (ii) the Commissioner shall not issue a license to an assisted living facility; (iii) a child-placing agency shall not approve an adoptive or foster home; or (iv) a family day system shall not approve a family day home.

D. No person specified in subsection A shall be involved in the day-to-day operations of the child welfare agency or shall be alone with, in control of, or supervising one or more of the children without first having completed background checks pursuant to subsection B.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57 not involving abuse, neglect, moral turpitude, or a minor, provided 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by the Governor, provided 25 years have elapsed following the conviction.

G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, who has had his civil rights restored by the Governor, provided 10 years have elapsed following the conviction.

H. If an applicant is denied licensure, registration or approval because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

I. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

J. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on the issuance of a license for any offense shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726. (Code 1950, §§ 63-235, 63-236; 1968, cc. 578, 585, §§ 63.1-198, 63.1-199; 1975, c. 439; 1985, c. 360, § 63.1-198.1; 1986, cc. 300, 627; 1987, cc. 130, 131, 692, 693; 1992, c. 746; 1993, cc. 730, 742; 1995, c. 401; 1996, c. 747; 1997, c. 427; 1998, cc. 551, 581; 1999, c. 740; 2001, c. 778; 2002, c. 747; 2004, c. 714; 2005, cc. 610, 722, 924; 2006, c. 885.)

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§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain background check.

A. The Commissioner may revoke or deny renewal of a license or registration of a child welfare agency, an assisted living facility or adult day care center, a child-placing agency may revoke the approval of a foster home, and a family day system may revoke the approval of a family day home if the assisted living facility, adult day care center, child welfare agency, foster home or approved family day home has knowledge that a person specified in §§ 63.2-1720 and 63.2-1721 required to have a background check has an offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to the exceptions in subsection B of § 63.2-1720 and subsection E of § 63.2-1721, and the facility, center or agency refuses to separate such person from employment or service.

B. Failure to obtain background checks pursuant to §§ 63.2-1720 and 63.2-1721 shall be grounds for denial or revocation of a license, registration or approval. No violation shall occur if the assisted living facility, adult day care center or child welfare agency has applied for the background check timely and it has not been obtained due to administrative delay. The provisions of this section shall be enforced by the Department. (Code 1950, § 63-235; 1968, cc. 578, § 63.1-198, 585; 1975, c. 439; 1985, c. 360; 1992, c. 746; 1993, cc. 730, 742; 1995, c. 401; 1996, c. 747; 1997, c. 427; 1998, cc. 551, 581; 2002, c. 747.)

§ 63.2-1723. Child welfare agencies; criminal conviction and waiver.

A. Any person who seeks to operate, volunteer or work at a child welfare agency and who is disqualified because of a criminal conviction or a criminal conviction in the background check of any other adult living in a family day home regulated by the Department, pursuant to §§ 63.2-1720, 63.2-1721 and 63.2-1724, may apply in writing for a waiver from the Commissioner. The Commissioner may grant a waiver if the Commissioner determines that (i) the person is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the person's care. The Commissioner shall not grant a waiver to any person who has been convicted of a barrier crime as defined in § 63.2-1719. However, the Commissioner may grant a waiver to a family day home regulated by the Department if any other adult living in the home of the applicant or provider has been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, provided (a) five years have elapsed following the conviction and (b) the Department has conducted a home study that includes, but is not limited to, (1) an assessment of the safety of children placed in the home and (2) a determination that the offender is now a person of good moral character and reputation. The waiver shall not be granted if the adult living in the home is an assistant or substitute provider or if such adult has been convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2. Any waiver granted under this section shall be available for inspection by the public. The child welfare agency shall notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees or volunteers.

B. The Board shall adopt regulations to implement the provisions of this section. (1998, cc. 551, 581, § 63.1-198.4; 2001, c. 867; 2002, c. 747.)

§ 63.2-1724. Records check by unlicensed child day center; penalty.

Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a prospective employee or volunteer or any other person who is expected to be alone with one or more children enrolled in the child day center to obtain within 30 days of employment or commencement of volunteer service, a search of the central registry maintained pursuant to § 63.2-1515 on any founded complaint of child abuse or neglect and a criminal records check as provided in subdivision A 11 of § 19.2-389 and shall refuse employment or service to any person

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who has any offense defined in § 63.2-1719. Such center shall also require a prospective employee or volunteer or any other person who is expected to be alone with one or more children in the child day center to provide a sworn statement or affirmation disclosing whether or not the applicant has ever been (i) the subject of a founded complaint of child abuse or neglect, or (ii) convicted of a crime or is the subject of pending criminal charges for any offense within the Commonwealth or any equivalent offense outside the Commonwealth. The foregoing provisions shall not apply to a parent or guardian who may be left alone with his or her own child. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would have been a felony if committed by an adult within or outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If an applicant is denied employment or service because of information from the central registry or convictions appearing on his criminal history record, the child day center shall provide a copy of the information obtained from the central registry or Central Criminal Records Exchange or both to the applicant. Further dissemination of the information provided to the facility is prohibited.

The provisions of this section referring to volunteers shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending the child day center whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child, in a program which operates no more than four hours per day, where the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section. (1985, c. 360, § 63.1-198.2; 1987, cc. 130, 692, 693; 1993, cc. 730, 742; 1998, cc. 551, 581; 2000, cc. 210, 248; 2002, c. 747; 2003, c. 467.)

§ 63.2-1725. Records checks of child day centers or family day homes receiving federal, state or local child care funds; penalty.

Whenever any child day center or family day home that has not met the requirements of §§ 63.2-1720, 63.2-1721 and 63.2-1724 applies to enter into a contract with a local department to provide child care services to clients of the local department, the local department shall require a criminal records check pursuant to subdivision A 11 of § 19.2-389, as well as a search of the central registry maintained pursuant to § 63.2-1515, on any child abuse or neglect investigation, of the applicant; any employee; prospective employee; volunteers; agents involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or more of the children; and any other adult living in a family day home. The applicant shall provide the local department with copies of these records checks. The child day center or family day home shall not be permitted to enter into a contract with a local department for child care services when an applicant; any employee; a prospective employee; a volunteer, an agent involved in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or any other adult living in a family day home has any offense as defined in § 63.2-1719. The child day center or family day home shall also require the above individuals to provide a sworn statement or affirmation disclosing whether or not the person has ever been (i) the subject of a founded case of child abuse or neglect or (ii) convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If a person is denied employment or work because of information from the central registry or convictions appearing on his criminal history record, the child day center or family day program shall provide a copy of such information obtained from

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the central registry or Central Criminal Records Exchange or both to the person. Further dissemination of the information provided to the facility, beyond dissemination to the local department, is prohibited. (1999, c. 727, § 63.1-198.5; 2002, c. 747.)

§ 63.2-1726. Background check required; children's residential facilities.

A. As a condition of employment, volunteering or providing services on a regular basis, every children's residential facility that is regulated or operated by the Departments of Social Services; Education; Military Affairs; or Mental Health, Mental Retardation and Substance Abuse Services shall require any individual who (i) accepts a position of employment at such a facility who was not employed by that facility prior to July 1, 2007, (ii) volunteers for such a facility on a regular basis and will be alone with a juvenile in the performance of his duties who was not a volunteer at such facility prior to July 1, 2007, or (iii) provides contractual services directly to a juvenile for such facility on a regular basis and will be alone with a juvenile in the performance of his duties who did not provide such services prior to July 1, 2007; to submit to fingerprinting and to provide personal descriptive information, to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. The children's residential facility shall inform the applicant that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the applicant's eligibility to have responsibility for the safety and well-being of children. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth. The results of the criminal history background check must be received prior to permitting an applicant to work with children.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the state agency which operates or regulates the children's residential facility with which the applicant is affiliated. The state agency shall, upon receipt of an applicant's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the children's facility whether the applicant is eligible to have responsibility for the safety and well-being of children. Except as otherwise provided in subsection B, no children's residential facility regulated or operated by the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; Military Affairs; or Social Services shall hire for compensated employment or allow to volunteer or provide contractual services persons who have been (i) convicted of or are the subject of pending charges for the following crimes: murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out in § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed off shotgun in a crime of violence as set out in subsection A of § 18.2-300;

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pandering as set out in § 18.2-355; crimes against nature involving children as set out § 18.2-361; taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1; abuse or neglect of children as set out in § 18.2-371.1, including failure to secure medical attention for an injured child as set out in § 18.2-314; obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse or neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment, to be a volunteer, or to provide contractual services; or (iii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs. The provisions of this section also shall apply to structured residential programs, excluding secure detention facilities, established pursuant to § 16.1-309.3 for juvenile offenders cited in a complaint for intake or in a petition before the court that alleges the juvenile is delinquent or in need of services or supervision.

B. Notwithstanding the provisions of subsection A, a children's residential facility may hire for compensated employment or for volunteer or contractual service purposes persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment, volunteer, or contractual services.

If the applicant is denied employment, or the opportunity to volunteer or provide services at a children's residential facility because of information appearing on his criminal history record, and the applicant disputes the information upon which the denial was based, upon written request of the applicant the state agency shall furnish the applicant the procedures for obtaining his criminal history record from the Federal Bureau of Investigation. If the applicant has been permitted to assume duties that do not involve contact with children pending receipt of the report, the children's residential facility is not precluded from suspending the applicant from his position pending a final determination of the applicant's eligibility to have responsibility for the safety and well-being of children. The information provided to the children's residential facility shall not be disseminated except as provided in this section.

C. Those individuals listed in clauses (i), (ii) and (iii) of subsection A also shall authorize the children's residential facility to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him. The applicant shall provide the children's residential facility with a written statement or affirmation disclosing whether he has ever been the subject of a founded case of child abuse or neglect within or outside the Commonwealth. The children's residential facility shall receive the results of the central registry search prior to permitting an applicant to work alone with children. Children's residential facilities regulated or operated by the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; Military Affairs; and Social Services shall not hire for compensated employment or allow to volunteer or provide contractual services, persons who have a founded case of child abuse or neglect. Every residential facility for juveniles which is regulated or operated by the Department of Juvenile Justice shall be authorized to obtain a copy of the information from the central registry.

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D. The Boards of Social Services; Education; Juvenile Justice; and Mental Health, Mental Retardation and Substance Abuse Services, and the Department of Military Affairs, may adopt regulations to comply with the provisions of this section. Copies of any information received by a children's residential facility pursuant to this section shall be available to the agency that regulates or operates such facility but shall not be disseminated further. The cost of obtaining the criminal history record and the central registry information shall be borne by the employee or volunteer unless the children's residential facility, at its option, decides to pay the cost. (1994, c. 704, § 63.1-248.7:2; 1996, c. 747; 2001, c. 138; 2002, c. 747; 2007, c. 573.)

§ 63.2-1727. Sex offender or child abuser prohibited from operating or residing in family day home.

It shall be unlawful for any person to operate a family day home if he, or if he knows that any other person who resides, is employed by, or volunteers in the home, has been convicted of a felony in violation of §§ 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-355, 18.2-361, 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-371.1 or § 18.2-374.1, or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. A violation of this section shall be punishable as a Class 1 misdemeanor. (1994, c. 126, § 63.1-198.3; 1998, cc. 551, 581; 2002, c. 747; 2006, cc. 796, 804.)

§ 63.2-1728. Establishment of toll-free telephone line for complaints; investigation on receipt of complaints.

With such funds as are appropriated for this purpose, the Commissioner shall establish a toll-free telephone line to respond to complaints regarding operations of assisted living facilities, adult day care centers and child welfare agencies. Upon receipt of a complaint concerning the operation of an assisted living facility, adult day care center or child welfare agency, regardless of whether the program is subject to licensure, the Commissioner shall, for good cause shown, cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, records and facilities. The assisted living facility, adult day care center or child welfare agency shall afford the Commissioner reasonable opportunity to inspect all of the operator's activities, services, records and facilities and to interview its agents and employees and any child or other person within its custody or control. Whenever an assisted living facility, adult day care center or child welfare agency subject to inspection under this section is determined by the Commissioner to be in noncompliance with the provisions of this subtitle or with regulations adopted pursuant to this subtitle, the Commissioner shall give reasonable notice to the assisted living facility, adult day care center or child welfare agency of the nature of its noncompliance and may thereafter take appropriate action as provided by law, including a suit to enjoin the operation of the assisted living facility, adult day care center or child welfare agency. (1993, cc. 730, 742, § 63.1-198.03; 2002, c. 747.)

§ 63.2-1729. Confidentiality of complainant's identity.

Whenever the Department conducts inspections and investigations in response to complaints received from the public, the identity of the complainant and the identity of any resident, participant or child who is the subject of the complaint, or identified therein, shall be confidential and shall not be open to inspection by members of the public. Identities of the complainant and resident, participant or child who is the subject of the complaint shall be revealed only if a court order so requires. Nothing contained herein shall prevent the Department, in its discretion, from disclosing to the assisted living facility, adult day care center or child welfare agency the nature of the complaint or the identity of the resident, participant or child who is the subject of the complaint. Nothing contained herein shall prevent the Department or its employees from making reports under Chapter 15 (§ 63.2-1500 et seq.) of this title or Article 2

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(§ 63.2-1603 et seq.) of Chapter 16 of this title. If the Department intends to rely, in whole or in part, on any statements made by the complainant, at any administrative hearing brought against the assisted living facility, adult day care center or child welfare agency, the Department shall disclose the identity of the complainant to the assisted living facility, adult day care center or child welfare agency a reasonable time in advance of such hearing. (1994, c. 941, § 63.1-177.2; 2002, c. 747.)

§ 63.2-1730. Retaliation or discrimination against complainants.

No assisted living facility, adult day care center or child welfare agency may retaliate or discriminate in any manner against any person who (i) in good faith complains or provides information to, or otherwise cooperates with, the Department or any other agency of government or any person or entity operating under contract with an agency of government, having responsibility for protecting the rights of residents of assisted living facilities, participants in adult day care centers or children in child welfare agencies, (ii) attempts to assert any right protected by state or federal law, or (iii) assists any person in asserting such right. (1994, c. 941, § 63.1-177.1; 2002, c. 747.)

§ 63.2-1731. Retaliation against reports of child or adult abuse or neglect.

No assisted living facility, adult day care center or child welfare agency may retaliate in any manner against any person who in good faith reports adult or child abuse or neglect pursuant to Chapter 15 (§ 63.2-1500 et seq.) of this title or Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of this title. (1996, c. 487, § 63.1-198.03:1; 2002, c. 747.)

§ 63.2-1732. Regulations for assisted living facilities.

A. The Board shall have the authority to adopt and enforce regulations to carry out the provisions of this subtitle and to protect the health, safety, welfare and individual rights of residents of assisted living facilities and to promote their highest level of functioning. Such regulations shall take into consideration cost constraints of smaller operations in complying with such regulations and shall provide a procedure whereby a licensee or applicant may request, and the Commissioner may grant, an allowable variance to a regulation pursuant to § 63.2-1703.

B. Regulations shall include standards for staff qualifications and training; facility design, functional design and equipment; services to be provided to residents; administration of medicine; allowable medical conditions for which care can be provided; and medical procedures to be followed by staff, including provisions for physicians' services, restorative care, and specialized rehabilitative services. The Board shall adopt regulations on qualifications and training for employees of an assisted living facility in a direct care position. "Direct care position" means supervisors, assistants, aides, or other employees of a facility who assist residents in their daily living activities.

C. Regulations for a Medication Management Plan in a licensed assisted living facility shall be developed by the Board, in consultation with the Board of Nursing and the Board of Pharmacy. Such regulations shall (i) establish the elements to be contained within a Medication Management Plan, including a demonstrated understanding of the responsibilities associated with medication management by the facility; standard operating and record-keeping procedures; staff qualifications, training and supervision; documentation of daily medication administration; and internal monitoring of plan conformance by the facility; (ii) include a requirement that each assisted living facility shall establish and maintain a written Medication Management Plan that has been approved by the Department; and (iii) provide that a facility's failure to conform to any approved Medication Management Plan shall be subject to the sanctions set forth in § 63.2-1709 or 63.2-1709.2.

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D. Regulations shall require all licensed assisted living facilities with six or more residents to be able to connect by July 1, 2007, to a temporary emergency electrical power source for the provision of electricity during an interruption of the normal electric power supply. The installation shall be in compliance with the Uniform Statewide Building Code.

E. Regulations for medical procedures in assisted living facilities shall be developed in consultation with the State Board of Health and adopted by the Board, and compliance with these regulations shall be determined by Department of Health or Department inspectors as provided by an interagency agreement between the Department and the Department of Health.

F. In developing regulations to determine the number of assisted living facilities for which an assisted living facility administrator may serve as administrator of record, the Board shall consider (i) the number of residents in each of the facilities, (ii) the travel time between each of the facilities, and (iii) the qualifications of the on-site manager under the supervision of the administrator of record.

G. Regulations shall require that each assisted living facility register with the Department of State Police to receive notice of the registration or reregistration of any sex offender within the same or a contiguous zip code area in which the facility is located, pursuant to § 9.1-914.

H. Regulations shall require that each assisted living facility ascertain, prior to admission, whether a potential resident is a registered sex offender, if the facility anticipates the potential resident will have a length of stay greater than three days or in fact stays longer than three days. (Code 1950, § 63-223; 1954, c. 259; 1968, c. 578, § 63.1-174; 1973, c. 227; 1991, c. 532; 1993, cc. 957, 993; 1995, c. 649; 1997, c. 397; 2000, cc. 804, 808, 845; 2001, c. 161; 2002, c. 747; 2004, c. 673; 2005, cc. 610, 924; 2007, cc. 119, 164.)

§ 63.2-1733. Regulations for adult day care centers.

A. The Board shall have the authority to adopt and enforce regulations to carry out the provisions of this subtitle and to protect the health, safety, welfare, and individual rights of participants of adult day care centers and to promote their highest level of functioning.

B. Regulations shall include standards for care and services to be provided to participants; administration of medication; staffing; staff qualifications and training; and facility design, construction, and equipment. (1992, c. 356, § 63.1-194.2; 2002, c. 747.)

§ 63.2-1734. Regulations for child welfare agencies.

The Board, or in the case of child day centers, the Child Day-Care Council, shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies.

Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out, as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such limitations and standards shall be specified in each license and renewal thereof. Such regulations shall not require the adoption of a specific teaching approach or doctrine or require the membership, affiliation or accreditation services of any single private accreditation or certification agency. (Code 1950, § 63-239; 1968, cc. 578, 585, § 63.1-202; 1970, c. 721; 1987, c. 698; 1993, cc. 730, 742; 1998, c. 237; 2002, cc. 298, 747.)

§ 63.2-1735. Child Day-Care Council created; members; terms; duties.

The Child Day-Care Council is hereby continued. Its members shall be appointed by the Governor and serve without compensation. Notwithstanding the provisions of § 2.2-2813,

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reimbursement for travel expenses of members shall be limited to in-state travel. The members of the Council shall consist of one nonprofit child day center operator; three private for-profit child day center operators; one representative from each of the Departments of Social Services, Health, Education, Fire Programs, and Housing and Community Development; one pediatric health professional; one child development specialist; one parent consumer; one legal professional; one representative of the National Association for the Education of Young Children; one representative of the YMCA; one representative of the National Academy of Early Childhood Programs; one representative of the Association of Christian Schools International; one representative of the American Association of Christian Schools; one representative of the National Early Childhood Program Accreditation; one representative of the National Accreditation Council for Early Childhood Professional Personnel and Programs; one representative of the International Academy for Private Education; one representative of the American Montessori Society; one representative of the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; one representative of the National Accreditation Commission; one representative of the Virginia Council for Private Education; and one representative each of a child day center offering a seasonal program emphasizing outdoor activities, a private child day center offering a half-day nursery school program, and a local governing body all of which operate programs required to be licensed under this chapter. The membership of the Council shall also include such representatives of state agencies as advisory members as the Governor deems necessary. The Governor shall designate a member of the Council to serve as chairman.

The members of the Council shall be appointed for four-year terms, except appointments to fill vacancies shall be for the unexpired term.

The Council shall adopt regulations for licensure and operation of child day centers in the Commonwealth in accordance with the regulations referred to in § 63.2-1734.

The Council shall adopt regulations in collaboration with the Virginia Recreation and Park Society and the Department of Mental Health, Mental Retardation and Substance Abuse Services for therapeutic recreation programs.

All staff and other support services required by the Council shall be provided by the Department. (1987, c. 698, § 63.1-202.1; 1992, c. 661; 1993, cc. 730, 742; 2002, cc. 747, 847; 2008, c. 123.)

§ 63.2-1736. Interagency agreements; cooperation of Department with other departments.

The Department is authorized to enter into interagency agreements with other state agencies to develop and implement regulations. Any state agency identified by the Department as appropriate to include in an interagency agreement shall participate in the development and implementation of the agreement. The Department shall assist and cooperate with other state departments in fulfilling their respective inspection responsibilities and in coordinating the regulations involving inspections. The Board may adopt regulations allowing the Department to so assist and cooperate with other state departments. (1991, c. 532, § 63.1-178.1; 1993, cc. 957, 993; 2002, c. 747.)

§ 63.2-1737. Licensure of group homes and residential facilities for children.

A. Notwithstanding any other provisions of this subtitle, the Department shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities of children's residential facilities. The Board shall adopt regulations establishing the Department as the single licensing agency for the regulation of children's residential facilities, including group homes, which provide social services programs, with the exception of educational programs licensed by the Department of Education and facilities regulated by the

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Department of Juvenile Justice. Notwithstanding any other provisions of this chapter, licenses issued to children's residential facilities may be issued for periods of up to 36 successive months.

B. The Board's regulations for the regulation of children's residential facilities shall address the services required to be provided in such facilities as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as adopted by the Board and in effect on January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the regulations for children's residential facilities.

D. Pursuant to the procedures set forth in subsection E and in addition to the authority for other disciplinary actions provided in this title, the Commissioner may issue a summary order of suspension of the license of any group home or residential facility for children, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation of the home or facility should be suspended during the pendency of such proceeding.

E. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to such residents.

F. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of

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the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, and community relations; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

G. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Comprehensive Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;

3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan;

5. Disseminate to local governments, or post on the Department's website, an accurate (updated weekly or monthly as necessary) list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency; and

6. Modify the term of the license at any time during the term of the license based on a change in compliance. (1979, c. 218, § 63.1-196.4; 1984, c. 55; 1987, c. 578; 1992, c. 666; 2002, c. 747; 2005, cc. 358, 471; 2006, cc. 168, 781; 2008, c. 873.)

§ 63.2-1738. Program leaders and child-care supervisors at licensed child day centers; approved credential.

Program leaders and child-care supervisors employed by child day centers may possess an approved credential. For purposes of this section:

"Approved credential" means a competency-based credential awarded to individuals who work with children ages five and under in either a teaching, supervisory or administrative capacity and that is specifically awarded or administered by the National Association for the Education of Young Children; the National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; the National Accreditation Commission; the Virginia Community College System or other institution of higher learning; or its equivalent as determined by the Department.

"Program leader" or **"child-care supervisor"** means an individual designated to be responsible for the direct supervision of children and for the implementation of the activities and services for a group of children in a licensed child day center. (2002, c. 848, § 63.1-202.02; 2003, c. 467.)

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CHAPTER 18.

Facilities and Programs.

Article 1.

Assisted Living Facilities.

§ 63.2-1800. Licensure requirements.

A. Each license shall indicate whether the facility is licensed to provide residential living care or residential living and assisted living care.

B. Any facility licensed exclusively as an assisted living facility shall not use in its title the words "convalescent," "health," "hospital," "nursing," "sanatorium," or "sanitarium," nor shall such words be used to describe the facility in brochures, advertising, or other marketing material. No facility shall advertise or market a level of care that it is not licensed to provide. Nothing in this subsection shall prohibit the facility from describing services available in the facility.

C. Upon initial application for a license, any person applying to operate an assisted living facility who has not previously owned or managed or does not currently own or manage such a facility shall be required to undergo training by the Commissioner. The training programs shall focus on health and safety regulations and resident rights as they pertain to assisted living facilities and shall be completed by the owner or administrator prior to the granting of an initial license. Such training shall be required of those owners and currently employed administrators of an assisted living facility at the time of initial application for a license. The Commissioner may also approve training programs provided by other entities and allow owners or administrators to attend such approved training programs in lieu of training by the Commissioner. The Commissioner may also approve for licensure applicants who meet requisite experience criteria as established by the Board. The Commissioner may, at his discretion, issue a license conditioned upon the owner or administrator's completion of the required training.

D. For the purpose of facilitating the prompt restoration of electrical service and prioritization of customers during widespread power outages, the Commissioner shall notify on a quarterly basis all electric utilities serving customers in Virginia as to the location of all assisted living facilities licensed in the Commonwealth. The requirements of this subsection shall be met if the Commissioner maintains such information on an electronic database accessible by electric utilities serving customers in Virginia. (Code 1950, § 63-23.1; 1954, c. 259; 1968, c. 578, § 63.1-175; 1972, c. 540; 1973, c. 227; 1979, c. 461; 1981, c. 222; 1983, c. 153; 1991, c. 532; 1992, c. 666; 1993, cc. 957, 993; 1994, c. 686; 1999, c. 964; 2000, cc. 178, 203; 2002, c. 747; 2004, c. 304.)

§ 63.2-1801. Access to assisted living facilities by community services boards and behavioral health authorities.

All assisted living facilities shall provide reasonable access to staff or contractual agents of community services boards or behavioral health authorities as defined in § 37.2-100 for the purposes of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or (iii) monitoring the care of consumers residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services. (Code 1950, § 63-224; 1954, c. 259; 1968, c. 578, § 63.1-177; 1973, c. 227; 1979, c. 73; 1988, cc. 61, 151; 1991, c. 532; 1992, c. 666; 1993, cc. 957, 993; 1999, c. 964; 2000, c. 130; 2002, c. 747; 2005, c. 716.)

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§ 63.2-1802. Safe, secure environments for residents with serious cognitive impairments.

Assisted living facilities may provide safe, secure environments for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia if they comply with the Board's regulations governing such placement. The Board's regulations shall define (i) serious cognitive impairment, which shall include, but not be limited to, an assessment by a clinical psychologist licensed to practice in the Commonwealth or by a physician and (ii) safe, secure environment. Prior to placing a resident with a serious cognitive impairment due to a primary psychiatric diagnosis of dementia in a safe, secure environment, an assisted living facility shall obtain the written approval of one of the following persons, in the specified order of priority: (a) the resident, if capable of making an informed decision; (b) a guardian or legal representative for the resident; however, such an appointment shall not be required in order that written approval may be obtained; (c) a relative authorized pursuant to the Board's regulations to act as the resident's representative; or (d) an independent physician who is skilled and knowledgeable in the diagnosis and treatment of dementia, if a guardian, legal representative or relative is unavailable. Such written approval shall be retained in the resident's file. (Code 1950, § 63-223; 1954, c. 259; 1968, c. 578, § 63.1-174; 1973, c. 227; 1991, c. 532; 1993, cc. 957, 993; 1995, c. 649; 1997, c. 397; 2000, cc. 804, 808, 845; 2001, c. 161; 2002, cc. 332, 747; 2003, c. 467.)

§ 63.2-1803. (See Editor's note) Staffing of assisted living facilities.

A. An administrator is any person meeting the qualifications for administrator of an assisted living facility, pursuant to regulations adopted by the Board. Any person meeting the qualifications for a licensed nursing home administrator under § 54.1-3103 shall be deemed qualified to (i) serve as an administrator of an assisted living facility or (ii) serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building.

B. The assisted living facility shall have adequate and sufficient staff to provide services to attain and maintain (i) the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care and (ii) the physical safety of the residents on the premises. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available. (Code 1950, §§ 63-222, 63-223; 1954, c. 259; 1968, c. 578, §§ 63.1-172, 63.1-174; 1972, c. 718; 1973, c. 227; 1975, c. 437; 1977, c. 105; 1985, cc. 17, 518; 1991, c. 532; 1992, c. 356; 1993, cc. 957, 993; 1994, c. 107; 1995, c. 649; 1997, c. 397; 1998, cc. 552, 850; 2000, cc. 804, 808, 845; 2001, c. 161; 2002, c. 747; 2003, c. 467.)

§ 63.2-1803. (See Editor's note) Staffing of assisted living facilities.

A. An administrator of an assisted living facility shall be licensed as an assisted living facility administrator by the Virginia Board of Long-Term Care Administrators pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1. However, an administrator of an assisted living facility licensed for residential living care only shall not be required to be licensed. Any person meeting the qualifications for a licensed nursing home administrator under § 54.1-3103 shall be deemed qualified to (i) serve as an administrator of an assisted living facility or (ii) serve as the administrator of both an assisted living facility and a licensed nursing home, provided the assisted living facility and licensed nursing home are part of the same building.

B. The assisted living facility shall have adequate, appropriate, and sufficient staff to provide services to attain and maintain (i) the physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care and (ii) the

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physical safety of the residents on the premises. Upon admission and upon request, the assisted living facility shall provide in writing a description of the types of staff working in the facility and the services provided, including the hours such services are available. (Code 1950, §§ 63-222, 63-223; 1954, c. 259; 1968, c. 578, §§ 63.1-172, 63.1-174; 1972, c. 718; 1973, c. 227; 1975, c. 437; 1977, c. 105; 1985, cc. 17, 518; 1991, c. 532; 1992, c. 356; 1993, cc. 957, 993; 1994, c. 107; 1995, c. 649; 1997, c. 397; 1998, cc. 552, 850; 2000, cc. 804, 808, 845; 2001, c. 161; 2002, c. 747; 2003, c. 467; 2005, cc. 610, 924.)

§ 63.2-1803.1. Assisted Living Facility Education, Training, and Technical Assistance Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Assisted Living Facility Education, Training, and Technical Assistance Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All penalties directed to this fund by subdivision B 4 of § 63.2-1709.2 and all other funds from any public or private source directed to the Fund shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of providing education and training for staff of and technical assistance to assisted living facilities to improve the quality of care in such facilities. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner. (2005, cc. 610, 924.)

§ 63.2-1804. Uniform assessment instrument.

A uniform assessment instrument setting forth a resident's care needs shall be completed for all residents upon admission and at subsequent intervals as determined by Board regulation. No uniform assessment instrument shall be required to be completed upon admission if a uniform assessment instrument was completed by a case manager or other qualified assessor within ninety days prior to such admission to the assisted living facility unless there has been a change in the resident's condition within that time which would affect the admission. Uniform assessment instruments shall not be required to be completed more often than once every twelve months on individuals residing in assisted living facilities except that uniform assessment instruments shall be completed whenever there is a change in the resident's condition that appears to warrant a change in the resident's approved level of care. At the request of the assisted living facility, the resident's representative, the resident's physician, the Department or the local department, an independent assessment, using the uniform assessment instrument shall be completed to determine whether the resident's care needs are being met in the current placement. The resident's case manager or other qualified assessor shall complete the uniform assessment instrument for public pay residents or, upon request by the private pay resident, for private pay residents. Unless a private pay resident requests the uniform assessment instrument be completed by a case manager or other qualified assessor, qualified staff of the assisted living facility or an independent private physician may complete the uniform assessment instrument for private pay residents; however, for private pay residents, social and financial information which is not relevant because of the resident's payment status shall not be required. The cost of administering the uniform assessment instrument pursuant to this section shall be borne by the entity designated pursuant to Board regulations. Upon receiving the uniform assessment instrument prior to admission of a resident, the assisted living facility administrator shall provide written assurance that the facility has the appropriate license to meet the care needs of the resident at the time of admission. (1993, cc. 957, 993, § 63.1-173.3; 1995, c. 649; 2002, c. 747.)

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§ 63.2-1805. Admissions and discharge.

A. The Board shall adopt regulations:

1. Governing admissions to assisted living facilities;
2. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Department, to any prospective resident and his legal representative, if any, prior to admission and upon request, that discloses information, fully and accurately in plain language, about the (i) services; (ii) fees, including clear information about what services are included in the base fee and any fees for additional services; (iii) admission, transfer, and discharge criteria, including criteria for transfer to another level of care within the same facility or complex; (iv) general number and qualifications of staff on each shift; (v) range, frequency, and number of activities provided for residents; and (vi) ownership structure of the facility;
3. Establishing a process to ensure that each resident admitted or retained in an assisted living facility receives appropriate services and periodic independent reassessments and reassessments when there is a significant change in the resident's condition in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident;
4. Governing appropriate discharge planning for residents whose care needs can no longer be met by the facility;
5. Addressing the involuntary discharge of residents;
6. Requiring that residents are informed of their rights pursuant to § 63.2-1808 at the time of admission;
7. Establishing a process to ensure that any resident temporarily detained in a facility pursuant to §§ 37.2-809 through 37.2-813 is accepted back in the assisted living facility if the resident is not involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819; and
8. Requiring that each assisted living facility train all employees who are mandated to report adult abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences for failing to make a required report.

B. If there are observed behaviors or patterns of behavior indicative of mental illness, mental retardation, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument completed pursuant to § 63.2-1804, the facility administrator or designated staff member shall ensure that an evaluation of the individual is or has been conducted by a qualified professional as defined in regulations. If the evaluation indicates a need for mental health, mental retardation, substance abuse, or behavioral disorder services, the facility shall provide (i) a notification of the resident's need for such services to the authorized contact person of record when available and (ii) a notification of the resident's need for such services to the community services board or behavioral health authority established pursuant to Title 37.2 that serves the city or county in which the facility is located, or other appropriate licensed provider. The Department shall not take adverse action against a facility that has demonstrated and documented a continual good faith effort to meet the requirements of this subsection.

C. The Department shall not order the removal of a resident from an assisted living facility if (i) the resident, the resident's family, the resident's physician, and the facility consent to the resident's continued stay in the assisted living facility and (ii) the facility is capable of providing, obtaining, or arranging for the provision of necessary services for the resident, including, but not limited to, home health care and/or hospice care.

D. Notwithstanding the provisions of subsection C above, assisted living facilities shall not admit or retain an individual with any of the following conditions or care needs:

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1. Ventilator dependency.
2. Dermal ulcers III and IV, except those stage III ulcers that are determined by an independent physician to be healing.
3. Intravenous therapy or injections directly into the vein except for intermittent intravenous therapy managed by a health care professional licensed in Virginia or as permitted in subsection E.
4. Airborne infectious disease in a communicable state that requires isolation of the individual or requires special precautions by the caretaker to prevent transmission of the disease, including diseases such as tuberculosis and excluding infections such as the common cold.
5. Psychotropic medications without appropriate diagnosis and treatment plans.
6. Nasogastric tubes.
7. Gastric tubes except when the individual is capable of independently feeding himself and caring for the tube or as permitted in subsection E.
8. An imminent physical threat or danger to self or others is presented by the individual.
9. Continuous licensed nursing care (seven-days-a-week, 24-hours-a-day) is required by the individual.
10. Placement is no longer appropriate as certified by the individual's physician.
11. Maximum physical assistance is required by the individual as documented by the uniform assessment instrument and the individual meets Medicaid nursing facility level-of-care criteria as defined in the State Plan for Medical Assistance, unless the individual's independent physician determines otherwise. Maximum physical assistance means that an individual has a rating of total dependence in four or more of the seven activities of daily living as documented on the uniform assessment instrument.
12. The assisted living facility determines that it cannot meet the individual's physical or mental health care needs.
13. Other medical and functional care needs that the Board determines cannot be met properly in an assisted living facility.

E. Except for auxiliary grant recipients, at the request of the resident in an assisted living facility and when his independent physician determines that it is appropriate, (i) care for the conditions or care needs defined in subdivisions D 3 and D 7 may be provided to the resident by a licensed physician, a licensed nurse or a nurse holding a multistate licensure privilege under a physician's treatment plan, or a home care organization licensed in Virginia or (ii) care for the conditions or care needs defined in subdivision D 7 may also be provided to the resident by facility staff if the care is delivered in accordance with the regulations of the Board of Nursing for delegation by a registered nurse, 18 VAC 90-20-420 et seq.

The Board shall adopt regulations to implement the provisions of this subsection.

F. In adopting regulations pursuant to subsections A, B, C and D, and E the Board shall consult with the Departments of Health and Mental Health, Mental Retardation and Substance Abuse Services. (1993, cc. 957, 993, § 63.1-174.001; 1995, cc. 649, 844; 2000, c. 176; 2002, c. 747; 2004, c. 49; 2005, cc. 610, 716, 724, 924; 2007, c. 539.)

§ 63.2-1806. Hospice care.

Notwithstanding § 63.2-1805, at the request of the resident, hospice care may be provided in an assisted living facility under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1, if the hospice program determines that such program is appropriate for the resident. (1995, c. 649, § 63.1-174.2; 2002, c. 747; 2003, c. 526; 2007, c. 397.)

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§ 63.2-1807. Certification in cardiopulmonary resuscitation; do not resuscitate orders.

The owners or operators of any assisted living facility may provide that their employees who are certified in cardiopulmonary resuscitation (CPR) shall not be required to resuscitate any resident for whom a valid written order not to resuscitate in the event of cardiac or respiratory arrest has been issued by the attending physician and has been included in the resident's individualized service plan. (1996, c. 775, § 63.1-174.3; 2002, c. 747.)

§ 63.2-1808. Rights and responsibilities of residents of assisted living facilities; certification of licensure.

A. Any resident of an assisted living facility has the rights and responsibilities enumerated in this section. The operator or administrator of an assisted living facility shall establish written policies and procedures to ensure that, at the minimum, each person who becomes a resident of the assisted living facility:

1. Is fully informed, prior to or at the time of admission and during the resident's stay, of his rights and of all rules and expectations governing the resident's conduct, responsibilities, and the terms of the admission agreement; evidence of this shall be the resident's written acknowledgment of having been so informed, which shall be filed in his record;

2. Is fully informed, prior to or at the time of admission and during the resident's stay, of services available in the facility and of any related charges; this shall be reflected by the resident's signature on a current resident's agreement retained in the resident's file;

3. Unless a committee or conservator has been appointed, is free to manage his personal finances and funds regardless of source; is entitled to access to personal account statements reflecting financial transactions made on his behalf by the facility; and is given at least a quarterly accounting of financial transactions made on his behalf when a written delegation of responsibility to manage his financial affairs is made to the facility for any period of time in conformance with state law;

4. Is afforded confidential treatment of his personal affairs and records and may approve or refuse their release to any individual outside the facility except as otherwise provided in law and except in case of his transfer to another care-giving facility;

5. Is transferred or discharged only when provided with a statement of reasons, or for nonpayment for his stay, and is given reasonable advance notice; upon notice of discharge or upon giving reasonable advance notice of his desire to move, shall be afforded reasonable assistance to ensure an orderly transfer or discharge; such actions shall be documented in his record;

6. In the event a medical condition should arise while he is residing in the facility, is afforded the opportunity to participate in the planning of his program of care and medical treatment at the facility and the right to refuse treatment;

7. Is not required to perform services for the facility except as voluntarily contracted pursuant to a voluntary agreement for services that states the terms of consideration or remuneration and is documented in writing and retained in his record;

8. Is free to select health care services from reasonably available resources;

9. Is free to refuse to participate in human subject experimentation or to be party to research in which his identity may be ascertained;

10. Is free from mental, emotional, physical, sexual, and economic abuse or exploitation; is free from forced isolation, threats or other degrading or demeaning acts against him; and his known needs are not neglected or ignored by personnel of the facility;

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11. Is treated with courtesy, respect, and consideration as a person of worth, sensitivity, and dignity;

12. Is encouraged, and informed of appropriate means as necessary, throughout the period of stay to exercise his rights as a resident and as a citizen; to this end, he is free to voice grievances and recommend changes in policies and services, free of coercion, discrimination, threats or reprisal;

13. Is permitted to retain and use his personal clothing and possessions as space permits unless to do so would infringe upon rights of other residents;

14. Is encouraged to function at his highest mental, emotional, physical and social potential;

15. Is free of physical or mechanical restraint except in the following situations and with appropriate safeguards:

a. As necessary for the facility to respond to unmanageable behavior in an emergency situation, which threatens the immediate safety of the resident or others;

b. As medically necessary, as authorized in writing by a physician, to provide physical support to a weakened resident;

16. Is free of prescription drugs except where medically necessary, specifically prescribed, and supervised by the attending physician, physician assistant, or nurse practitioner;

17. Is accorded respect for ordinary privacy in every aspect of daily living, including but not limited to the following:

a. In the care of his personal needs except as assistance may be needed;

b. In any medical examination or health-related consultations the resident may have at the facility;

c. In communications, in writing or by telephone;

d. During visitations with other persons;

e. In the resident's room or portion thereof; residents shall be permitted to have guests or other residents in their rooms unless to do so would infringe upon the rights of other residents; staff may not enter a resident's room without making their presence known except in an emergency or in accordance with safety oversight requirements included in regulations of the Board;

f. In visits with his spouse; if both are residents of the facility they are permitted but not required to share a room unless otherwise provided in the residents' agreements;

18. Is permitted to meet with and participate in activities of social, religious, and community groups at his discretion unless medically contraindicated as documented by his physician, physician assistant, or nurse practitioner in his medical record; and

19. Is fully informed, as evidenced by the written acknowledgment of the resident or his legal representative, prior to or at the time of admission and during his stay, that he should exercise whatever due diligence he deems necessary with respect to information on any sex offenders registered pursuant to Chapter 9 (§ 9.1-900 et. seq.) of Title 9.1, including how to obtain such information. Upon request, the assisted living facility shall assist the resident, prospective resident, or the legal representative of the resident or prospective resident in accessing this information and provide the resident, prospective resident, or the legal representative of the resident or prospective resident with printed copies of the requested information.

B. If the resident is unable to fully understand and exercise the rights and responsibilities contained in this section, the facility shall require that a responsible individual, of the resident's choice when possible, designated in writing in the resident's record, be made aware of each item

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in this section and the decisions that affect the resident or relate to specific items in this section; a resident shall be assumed capable of understanding and exercising these rights unless a physician determines otherwise and documents the reasons for such determination in the resident's record.

C. The rights and responsibilities of residents shall be printed in at least 12-point type and posted conspicuously in a public place in all assisted living facilities. The facility shall also post the name and telephone number of the regional licensing supervisor of the Department, the Adult Protective Services' toll-free telephone number, as well as the toll-free telephone number for the Virginia Long-Term Care Ombudsman Program, any sub-state ombudsman program serving the area, and the toll-free number of the Virginia Office for Protection and Advocacy.

D. The facility shall make its policies and procedures for implementing this section available and accessible to residents, relatives, agencies, and the general public.

E. The provisions of this section shall not be construed to restrict or abridge any right that any resident has under law.

F. Each facility shall provide appropriate staff training to implement each resident's rights included in this section.

G. The Board shall adopt regulations as necessary to carry out the full intent of this section.

H. It shall be the responsibility of the Commissioner to ensure that the provisions of this section are observed and implemented by assisted living facilities as a condition to the issuance, renewal, or continuation of the license required by this article. (1984, c. 677, § 63.1-182.1; 1989, c. 271; 1990, c. 458; 1992, c. 356; 1993, cc. 957, 993; 1997, c. 801; 2000, c. 177; 2002, cc. 45, 572, 747; 2004, c. 855; 2006, 396; 2007, cc. 120, 163.)

§ 63.2-1808.1. Life-sharing communities.

A. For the purposes of this section:

"Life-sharing community" is defined as a residential setting, operated by a non-profit organization, that (i) offers a safe environment in free standing, self-contained homes for residents that have been determined by a licensed health-care professional as having at least one developmental disability; (ii) is an environment located in a community setting where residents participate in therapeutic activities including artistic crafts, stewardship of the land, and agricultural activities; (iii) consists of the residents as well as staff and volunteers who live together in residential homes; (iv) operates at a ratio of at least one staff member, volunteer, or supervising personnel for every three residents in each self-contained home household; and (v) has at least one supervisory staff member on premises to be responsible for the care, safety, and supervision of the residents at all times.

"Resident" means an individual who has been determined by a physician or nurse practitioner to have at least one developmental disability and who resides at the life-sharing community on a full-time basis.

"Volunteer" means an individual who resides in the life-sharing community on a full-time basis and who assists residents with their daily activities and receives no wages. A volunteer may receive a small stipend for personal expenses.

B. Any facility seeking to operate as a life-sharing community shall file with the Commissioner: (i) a statement of intent to operate as a life-sharing community; (ii) a certification that at the time of admission, a contract and written notice was provided to each resident and his legally authorized representative that includes a statement of disclosure that the facility is exempt from licensure as an "assisted living facility," and (iii) documentary evidence that such life-sharing community is a private non-profit organization in accordance with 501(c)(3) of the Internal Revenue Code of 1954, as amended.

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C. Upon filing an initial statement of intent to operate as a life-sharing community, and every two years thereafter, the life-sharing community shall certify that the local health department, building inspector, fire marshal, or other local official designated by the locality to enforce the Statewide Fire Prevention Code, and any other local official required by law to inspect the premises, have inspected the physical facilities of the life-sharing community and have determined that the facility is in compliance with all applicable laws and regulations with regard to food service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code and the Uniform Statewide Building Code.

D. Upon filing an initial statement of intent to operate as a life-sharing community, and every two years thereafter, the life-sharing community shall provide the Commissioner documentary evidence that:

1. Life-sharing community staff and volunteers have completed a training program that includes instruction in personal care of residents, house management, and therapeutic activities;
2. Volunteers and staff have completed first aid and Cardio-Pulmonary Resuscitation training;
3. Each resident's needs are evaluated using the Uniform Assessment Instrument, and Individual Service Plans are developed for each resident annually;
4. The residents of the life-sharing community are each 21 years of age or older;
5. A criminal background check through the Criminal Records Exchange has been completed for each (i) full-time salaried staff member and (ii) volunteer as defined in this section.

E. A residential facility operating as a life-sharing facility shall be exempt from the licensing requirements of Article 1 (§ 63.2-1800 et seq.) of Chapter 18 of Title 63.2 applicable to assisted living facilities.

F. The Commissioner may perform unannounced on-site inspections of a life-sharing community to determine compliance with the provisions of this section and to investigate any complaint that the life-sharing community is not in compliance with the provisions of this section, or to otherwise ensure the health, safety, and welfare of the life-sharing community residents. The Commissioner may revoke the exemption from licensure pursuant to this chapter for any life-sharing community for serious or repeated violation of the requirements of this section and order that the facility cease operations or comply with the licensure requirements of an assisted living facility. If a life-sharing community does not file the statement and documentary evidence required by this section, the Commissioner shall give reasonable notice to such life-sharing community of the nature of its noncompliance and may thereafter take action as he determines appropriate, including a suit to enjoin the operation of the life-sharing community.

G. All life-sharing communities shall provide access to their facilities and residents by staff of community services boards and behavioral health authorities as defined in § 37.2-100 for the purpose of (i) assessing or evaluating, (ii) providing case management or other services or assistance, or (iii) monitoring the care of consumers residing in the facility. Such staff or contractual agents also shall be given reasonable access to other facility residents who have previously requested their services.

H. Any residents of any life-sharing community shall be accorded the same rights and responsibilities as residents in assisted living facilities as provided in subsections A through F of § 63.2-1808.

I. A life-sharing community shall not admit or retain individuals with any of the conditions or care needs as provided in subsection C of § 63.2-1805.

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J. Notwithstanding § 63.2-1805, at the request of the resident, hospice care may be provided in a life-sharing community under the same requirements for hospice programs provided in Article 7 (§ 32.1-162.1 et seq.) of Chapter 5 of Title 32.1 if the hospice program determines that such a program is appropriate for the resident. (2007, c. 677.)

§ 63.2-1809. Regulated child day programs to require proof of child identity and age; report to law-enforcement agencies.

A. Upon enrollment of a child in a regulated child day program, such child day program shall require information from the person enrolling the child regarding previous child day care and schools attended by the child. The regulated child day program shall also require that the person enrolling the child present the regulated child day program with the proof of the child's identity and age. The proof of identity, if reproduced or retained by the child day program or both, shall be destroyed upon the conclusion of the requisite period of retention. The procedures for the disposal, physical destruction or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

B. For purposes of this section:

"Proof of identity" means a certified copy of a birth certificate or other reliable proof of the child's identity and age.

"Regulated child day program" is one in which a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period that is licensed pursuant to § 63.2-1701, voluntarily registered pursuant to § 63.2-1704, certified as a preschool or nursery school program pursuant to § 63.2-1717, exempted from licensure as a child day center operated by a religious institution pursuant to § 63.2-1716, or approved as a family day home by a licensed family day system.

C. If the parent, guardian, or other person enrolling the child in a regulated child day program for longer than two consecutive days or other pattern of regular attendance does not provide the information required by subsection A within seven business days of initial attendance, such child day program shall immediately notify the local law-enforcement agency in its jurisdiction of such failure to provide the requested information.

D. Upon receiving notification of such failure to provide the information required by subsection A, the law-enforcement agency shall, if available information warrants, immediately submit an inquiry to the Missing Children Information Clearinghouse and, with the assistance of the local department, if available information warrants, conduct the appropriate investigation to determine whether the child is missing.

E. The Board shall adopt regulations to implement the provisions of this act. (1998, c. 860, § 63.1-196.002; 2002, c. 747; 2004, c. 450.)

§ 63.2-1809.1. Insurance notice requirements for family day homes; civil penalty.

A. Any person who operates a family day home approved by a licensed family day system, a licensed family day home, or a voluntarily registered family day home shall furnish a written notice to the parent or guardian of each child under the care of the family day home, which states whether there is liability insurance in force to cover the operation of the family day home; provided, that no person under this section shall state that liability insurance is in place to cover the operation of the family day home, unless there is a minimum amount of coverage as established by the Department.

B. Each parent or guardian shall acknowledge, in writing, receipt of such notice. In the event there is no longer insurance coverage, the person operating the family day home shall (i)

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notify each parent or guardian within 10 business days after the effective date of the change and (ii) obtain written acknowledgment of such notice. A copy of an acknowledgment required under this section shall be maintained on file at the family day home at all times while the child attends the family day home and for 12 months after the child's last date of attendance.

C. Any person who fails to give any notice required under this section shall be subject to a civil penalty of up to \$500 for each such failure. (2006, c. 923; 2007, c. 594.)

§ 63.2-1810. Dual licenses for certain child day centers.

Any facility licensed as a child day center which also meets the requirements for a license as a summer camp by the Department of Health under the provisions of § 35.1-18 shall be entitled to a summer camp license. Such a facility shall comply with all of the regulations adopted by the Board or Child Day-Care Council, whichever is applicable, and the State Board of Health for each such license. (1981, c. 287, § 63.1-196.01; 1987, c. 698; 1993, cc. 730, 742; 2002, c. 747.)

§ 63.2-1811. Asbestos inspection required for child day centers.

The Commissioner shall not issue a license to any child day center which is located in a building built prior to 1978 until he receives a written statement that the building has been inspected for asbestos, as defined by § 2.2-1162, and in accordance with the regulations for initial asbestos inspections pursuant to the Asbestos Hazard Emergency Response Act, 40 CFR Pt. 763 - Asbestos Containing Materials in Schools. The inspection shall be conducted by personnel competent to identify the presence of asbestos and licensed in Virginia as an asbestos inspector and as an asbestos management planner pursuant to Chapter 5 (§ 54.1-500 et seq.) of Title 54.1. The written statement shall state that either (i) no asbestos was detected or (ii) asbestos was detected and response actions to abate any risk to human health have been completed or (iii) asbestos was detected and response actions to abate any risk to human health have been recommended in accordance with a specified schedule and plan pursuant to applicable state and federal statutes and regulations. The statement shall include identification of any significant hazard areas, the date of the inspection and be signed by the person who inspected for the asbestos. If asbestos was detected, an operations and maintenance plan shall be developed in accordance with the regulations of the Asbestos Hazard Emergency Response Act and the statement shall be signed by the person who prepared the operations and maintenance plan. Any inspection, preparation of an operations and maintenance plan or response action shall be performed by competent personnel who have been licensed in accordance with the provisions of Chapter 5 of Title 54.1.

When asbestos has been detected, the applicant for licensure shall also submit to the Commissioner a written statement that response actions to abate any risk to human health have been or will be initiated in accordance with a specified schedule and plan as recommended by an asbestos management planner licensed in Virginia. This statement shall be signed by the applicant for licensure.

The written statements required by this section shall be submitted for approval to the Commissioner's representative prior to issuance of a license. The provisions of this section shall not apply to child day centers located in buildings required to be inspected pursuant to Article 5 (§ 2.2-1162 et seq.) of Chapter 11 of Title 2.2. (1987, c. 654, § 63.1-198.01; 1988, c. 723; 1993, cc. 660, 730, 742; 2002, c. 747.)

§ 63.2-1812. Delay in acting on application, or in notification.

In case the Commissioner fails to take final action upon an application for a license within sixty days after the application is made, either by way of issuance or refusal, or fails within such time to notify the applicant thereof, it shall be lawful for the applicant to engage in

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the operations or activities for which the license is desired, until the Commissioner has taken final action and notified the applicant thereof; however, no application shall be deemed made until all the required information is submitted in the form prescribed by the Commissioner. The provisions of this section shall not apply to a children's residential facility, child-placing agency, or independent foster home. (Code 1950, § 63-237; 1968, cc. 578, 585, § 63.1-200; 1999, c. 740; 2002, c. 747.)

§ 63.2-1813. Visitation by parents or guardians in child day programs.

A custodial parent or guardian shall be admitted to any child day program. For purposes of this section, "child day program" is one in which a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of thirteen for less than a twenty-four-hour period, regardless of whether it is licensed. Such right of admission shall apply only while the child is in the child day program. (1985, c. 251, § 63.1-210.1; 1993, cc. 730, 742; 2002, c. 747.)

§ 63.2-1814. Public funds to be withheld for serious or persistent violations.

The Board and the State Board of Education may adopt policies, as permitted by state and federal law, to restrict the eligibility of a licensed child welfare agency to receive or continue to receive funds when such agency is found to be in serious or persistent violation of regulations. (1993, cc. 730, 742, § 63.1-211.2; 1996, c. 492; 2002, c. 747.)

§ 63.2-1815. Subtitle not to apply to certain schools and institutions.

None of the provisions of this subtitle shall apply to any private school or charitable institution incorporated under the laws of this Commonwealth, which is located West of Sandy Ridge and on the watersheds of Big Sandy River, and to which no contributions are made by the Commonwealth or any agency thereof. (Code 1950, § 63-255; 1968, c. 578, § 63.1-218; 2002, c. 747.)

§ 63.2-1816. Municipal and county appropriations; contracts.

The governing bodies of the several cities and counties of this Commonwealth may, in their discretion, appropriate to incorporated charitable organizations licensed by the Commissioner for the purpose of receiving and caring for children, or placing or boarding them in private homes, such sums as to them may seem proper, for the maintenance and care of such dependent children as the charitable organizations may receive from the respective cities and counties. The governing body of any county may make contracts with such organizations. (Code 1950, § 63-256; 1968, c. 578, § 63.1-219; 2002, c. 747.)

§ 63.2-1817. Acceptance and control over children by licensed child-placing agency, children's residential facility or independent foster home.

A licensed child-placing agency, children's residential facility or independent foster home shall have the right to accept, for any purpose not contrary to the limitations contained in its license, such children as may be entrusted or committed to it by the parents, guardians, relatives or other persons having legal custody thereof, or committed by any court of competent jurisdiction. The agency, facility or home shall, within the terms of its license and the agreement or order by which such child is entrusted or committed to its care, have custody and control of every child so entrusted or committed and accepted, until he is lawfully discharged, has been adopted, or has attained his majority. An entrustment agreement for the termination of parental rights and responsibilities with respect to such child shall be executed in writing and notarized.

An agency that is licensed as a child-placing agency by the Department and certified as a proprietary school for students with disabilities by the Department of Education shall not be required to take custody of any child placed in its special education program but shall enter into a placement agreement with the parents or guardian of the child concerning the respective

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responsibilities of the agency and the parents or guardian for the care and control of the child. Such an agency shall conform with all other legal requirements of licensed child-placing agencies including the provisions of §§ 16.1-281 and 16.1-282.

A licensed private child-placing agency may accept placement of a child through an agreement with a local department where the local department retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A children's residential facility licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival. (2002, c. 747; 2004, c. 815.)

§ 63.2-1818. Reports to Commissioner.

Upon the entry of a final order of adoption involving a child placed by a licensed child-placing agency, that agency shall transmit to the Commissioner all reports and collateral information in connection with the case which shall be preserved by the Commissioner in accordance with § 63.2-1246. Such agency may keep duplicate copies of such reports and collateral information or may obtain copies of such documents from the Commissioner at a reasonable fee as prescribed by the Board. (2002, c. 747.)

§ 63.2-1819. Where child-placing agencies may place children.

Any licensed child-placing agency may place or negotiate and arrange for the placement of children in any licensed children's residential facility, and, unless its license contains a limitation to the contrary, a licensed child-placing agency may also place or arrange for the placement of such persons in any suitable foster home or independent living arrangement. (2002, c. 747; 2008, cc. 475, 483.)